

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

76-1011

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

-against-

ANTHONY SOLDANO,
Defendant-Appellant.

*On Appeal From The United States District
Court For The Southern District of New York*

Appellant's Appendix

ROBERT BLOSSNER
Attorney for Defendant-Appellant
250 Broadway
New York, New York 10007

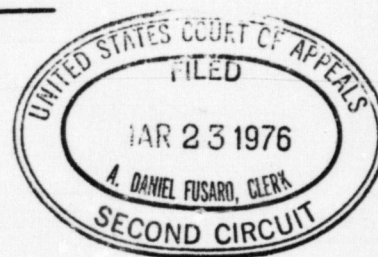


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1. JAMES TERRANO, a/k/a "Joe the Grind", 1-4
 2. FRANK PALLATTA, a/k/a "Bolot", and a/k/a "Nose", 1-4
 3. RICHARD BOLELLA, 1-4
 4. LOUIS MACCHIAROLA, a/k/a "Red Hot", 1-4
 5. MICHAEL CARBONE, 1-4
 6. DOMINIC TUFARO, a/k/a "Donnie Boy", 1-4
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 11. JOSEPH MALIZIA, a/k/a "Patsy Pontiac", 1-4
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 13. FRANK CARAVELLA, 13
 14. JOHN GWYNN, 1, 10, 14, 15, 16
 15. WILLIAM CHAPMAN, a/k/a "Chappy", 1
 16. ST. JULIAN HARRISON, 1 + 5
 17. FRANK LUCAS, 1, 5-7
 18. GERARD CACHOLAN, a/k/a "Coco", 1 + 11
 19. ROBERTO RIVERA, and 1 + 12
 20. GABRIEL RODRIGUEZ, a/k/a "Cass",
 a/k/a "Cassanova", 1 + 17

Attorney,

County Court, 21

NYSDA 846,841,812.(a)(1)(b)

Consp. to viol. Fed. Narco. Laws (Cr. 1)

Distr. & possess. w/intent to distr.

Heroin, I. & Cocaine, II. (Cts. 2-17)

(Seventeen Counts)

For Defendant: Stokemar & Epstein
 100 Church Street, NYC 10007
 962 1564 (Richard Bolella)

SH RECEIVED AND DISBURSED

NAME	RECEIVED	DISBURSED

DATE	PROCEEDINGS
7-10-75	Filed indictment.
7-15-75	Deft. Mangano (atty present Edward Panzer) enters plea of not guilty. Bail continued.
	Deft. Pallatta (atty present Jay Goldberg) enters plea of not guilty. Bail continued
	Deft. Bolella (atty present, Gilbert Epstein) enters plea of not guilty Bail continued.
	Deft. DeLutro (atty present) Enters plea of not guilty. Bail continued.
	Deft. Soldano (atty present) Robert Blassner Enters plea of not guilty. Bail continued.
	Deft. Gwynn (atty present Edward D. Loughman enters plea of not guilty. Bail continued
	Deft. Chapman (atty present, Reed) Enters plea of not guilty Bail continued.
	Deft. Cacholan (atty not present) Court enters plea of not guilty. Bail continued.
	Deft. Rivera Produced on Writ (atty not present) Court enters not guilty plea
	(continued on next pg)

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	Deft. Rodriguez Bench warrant ordered Issued Trial scheduled Sept 22, 1975 at 1:00 P.M.Cooper, J.		
-15-75	FRANK LUCAS-Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Trenton State Prison, Trenton, N.J. Writ issued, ret. 7-28-75.		
-24-75	Filed Govt's. affidavit & notice of motion for an order sequestering jurors during the trial of this matter.		
-28-75	Deft. Lucas (atty present) Jeffrey C. Hoffman. Pleads not guilty. Case referred to Judge Cooper. Writ satisfied,.....Conner,J.		
-30-75	ANTHONY DeLUTRO-Filed Second Offender Information.		
-30-75	WILLIAM CHAPMAN-Filed Second Offender Information.		
-30-75	ROBERTO RIVERA-Filed Second Offender Information.		
-30-75	ROBERTO RIVERA-Filed Second Offender Information.		
-30-75	FRANK LUCAS-Filed Second Offender Information.		
-31-75	Filed MEMO ENDORSED on Govt's. motion filed 7-24-75. Application for sequestration is denied without prejudice to renewal.....Cooper,J. (mailed notice)		
-25-75	ROBERTO RIVERA-Filed ORDER that the U.S. Marshal for the S.D.N.Y. maintain custody of the deft. in the Southern District pending the completion of the trial of this indictment.....Cooper,J.		
8-1-75	GERARD CACHOIAN-Filed Second Offender Information.		
-1-75	FRANK LUCAS-Filed OPINION #42898 - Deft's. motion for suppression of evidence is denied.....Cooper,J. (mailed notice)		
-13-75	FRANK LUCAS-Filed writ of habeas corpus directed to Warden, Trenton State Prison, with marshal's return. Writ satisfied 7-28-75.....Conner,J.		

DATE	PROCEEDINGS	Date Judgment
8-19-75	ANTHONY SOLDANO-Filed deft's. affidavit & notice of motion for a bill of particulars, discovery & inspection, disclosure & for suppression of evidence, ret. 8-29-75.	
8-25-75	ANTHONY SOLDANO-Filed Govt's. affidavit in opposition to deft's. motion for a bill of particulars & discovery.	
8-21-75	Filed OPINION #42987-Defts'. motions for discovery and for a bill of particulars are granted in part & denied in part. The motions of defts. Magnano and Palatta to strike aliases are denied. Defts'. Magnano, DeLutro & Palatta's motions for severance are denied. Defts'. Lucas, Bolella & Palatta motion for disclosure of agent or informer is denied. Deft. Soldano's. motion to dismiss the indictment is denied.....Cooper,J. (mailed notice)	
9-3-75	FRANK LUCAS-Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Trenton State Prison. Writ issued, ret. 9-19-75.	
9-3-75	ANTHONY SOLDANO-Filed MEMO ENDORSED on deft's. motion for a bill of particulars, discovery & suppression. Motion granted in part & denied in part.....Cooper,J. (mailed notice)	
9-10-75	Filed Govt's. affidavit for a writ of habeas corpus ad test. for John Vasquez directed to Superintendent, N.Y.S. Dept. of Corrections. Writ Issued, ret. forthwith	
9-16-75	ANTHONY DeLUTRO-Filed deft's. memorandum of law. (Filed in 75 Cr. 24).	
9-16-75	ANTHONY DeLUTRO-Filed deft's. requests to charge. (Filed in 75 Cr. 24).	
9-18-75	RICHARD BOLELLA-Filed deft's. affirmation & notice of motion for discovery and for a continuance, ret. 9-22-75.	
9-24-75	WILLIAM CHAPMAN-Filed CJA Form 23 - deft's. financial affidavit.	
9-23-75	WILLIAM CHAPMAN-Filed ORDER appointing William Charce, 70 Lafayette St., N.Y.C. 10013 as attorney for deft. in this matter only.....Cooper,J.	
9-30-75	RICHARD BOLELLA-Filed Govt's. affidavit in opposition to deft's. motion for discovery and for a continuance.	
10-1-75	ANTHONY DeLUTRO-Filed ORDER granting custody to the Govt. of sealed Court authorized intercepted wire communications not to be unsealed in the absence of further order of this Court.....Cooper,J.	
10-2-75	RICHARD BOLELLA-Filed MEMO ENDORSED on deft's. motion for discovery filed 9-18-75. The within application has been rendered in its entirety by the Govt's. disclosure in open court on 9-29-75.....Cooper,J.	
10-3-75	Filed Govt's. affidavit & ORDER that John Vasquez be lodged at the Bergen County Jail and transported to and from U.S. Attorney's Office, S.D.N.Y. during the period from 10-3-75 to 10-30-75.....Duffy,J.	
10-3-75	Filed Govt's. affidavit & ORDER that Anthony Manfredonia be lodged at the Bergen County Jail and transported to and from U.S. Attorney's Office, S.D.N.Y. during the period from 10-2-75 to 10-30-75.....Duffy,J.	

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PROCEEDINGS

9-22-75	Deft. Gerard Cachoian withdraws his plea of not guilty & pleads guilty to count 11 only. Govt. consents to dismiss count 1. Pre-sentence report ordered. Probation notified. Sentence - Date Open. Present bail condition continued.Cooper, J.
9-22-75	Jury trial begun as to the following defts. Joseph Magnano, Frank Pallatta, Richard Bolella, Anthony DeLutro, Anthony Saldano, John Gwynn, William Chapman, Roberto Rivera & Frank Lucas before Cooper, J. (Oath to jurors, voire dire).
9-24-75	Trial continued. Jury duly empaneled & sworn.
9-25-75	Trial continued. Deft. Roberto Rivera withdraws his plea of not guilty (during trial) & pleads guilty to count 1 only. (Count 12 open). Pre-sentence report ordered. Probation notified. (Sentence date open). Deft. remanded in custody of U.S. Marshals.Cooper, J.
9-26-75	Trial continued.
9-29-75	Trial continued.
9-30-75	Trial continued. Deft. Lucas bail exonerated & deft. remanded.
10-1-75	Trial continued.
10-2-75	Trial continued.
10-3-75	Trial continued.
10-6-75	Trial continued. Deft. William Chapman moves to exonerate bail. Motion Granted. no opposition by the Govt.
10-7-75	ROBERTO RIVERA-Filed deft's. petition to enter plea of guilty with Order - guilty plea accepted.Cooper, J.
10-7-75	Trial continued.
10-8-75	Trial continued.
10-9-75	Trial continued.
10-10-75	Trial continued.
10-14-75	Trial continued.
10-15-75	Trial continued. Govt. rests.
10-16-75	Trial continued.
10-17-75	Trial continued.
10-20-75	Trial continued.
10-21-75	Trial continued. All defts. rest.
10-22-75	Trial continued.
10-23-75	Trial continued.
10-24-75	Trial continued & concluded. (Special verdict as to all deft's. attached.) Jury Verdict - Deft. Joseph Magnano guilty on counts 1, 2, 3 & 4. (jury polled) Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.Cooper, J. Deft. Frank Pallatta guilty on counts 1, 2, 3 & 4 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.Cooper, J. Deft. Bolella guilty on counts 1 & 4 and jury disagreement on counts 2 & 3. (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.Cooper, J. Deft. Anthony DeLutro guilty on counts 1 & 8 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.Cooper, J. Deft. Anthony Saldano guilty on counts 1 & 9 (jury polled) Pre-sentence report ordered. Probation notified. Deft. Remanded. Sentence 12-3-75 at 10:00 A.M.Cooper, J.

Cont'd. on Page 05

DATE	PROCEEDINGS
10-24-75	Jury Verdict - Deft. John Gwynn guilty on counts 1, 10 & 16. Jury disagreement on counts 14 & 15. Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. remanded.Cooper, J. Deft. William Chapman jury disagreement on count 1 (R.O.R.)Cooper, J. Deft. Frank Lucas guilty on counts 1, 5, 6 & 7 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded,.....Cooper, J.
11-12-75	JOSEPH MAGNANO, et al.; - Filed Order that Mr. John Bright & Ms. Sonja Johnson be allowed entrance into the Metropolitan Correctional Center during visiting hours from 12:00 noon to 3:30 p.m. & 4:30 p.m. to 6:30 p.m. for the purpose of consulting with the defts. Joseph Magnano, Frank Palatta & Richard Bolella. Cooper J. (Consented by U.S. Atty.) (mailed notice)
11-20-75	Filed transcript of record of proceedings dated 9-22-75.
11-25-75	RICHARD BOLLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed defts'. affidavit & notice of motion for an evidentiary hearing to determine if a new trial should be granted and for a judgment of acquittal on counts 2 & 3 as to deft. Bolella, ret. 12-3-75.
11-26-75	ANTHONY DeLUTRO-Filed deft's. affidavit & notice of motion for a new trial and for a judgment of acquittal. ret. 12-3-75.
12-3-75	JOHN GWYNN-Filed deft's. motion for a judgment of acquittal or alternatively for a new trial.
12-3-75	JOHN GWYNN-Filed MEMO ENDORSED on deft's. motion filed 12-3-75. Motion denied in all respects.....Cooper, J. (mailed notice)
12-3-75	Filed Govt's. affidavit in opposition to defts'. post trial motions for a new trial.
12-3-75	ANTHONY DeLUTRO-Filed MEMO ENDORSED on deft's. motion for a new trial and for a judgment of acquittal, filed 11-26-75. Motion denied in all respects...Cooper, J. (mailed notice)
12-3-75	RICHARD BOLLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed MEMO ENDORSED on defts'. motion for an evidentiary hearing & for a judgment of acquittal, filed 11-25-75. Motion denied in all respects.....Cooper, J. (mailed notice)
12-5-75	RICHARD BOLELLA-Filed true copy of U.S.C.A. Mandate - Deft's. motion dated 10-28-75 for bail pending sentencing is denied. (mailed notice)
12-9-75	ROBERTO RIVERA-Filed Govt's. sentencing memorandum.
12-3-75	RICHARD BOLELLA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS on each of counts 1 and 4 to run CONSECUTIVELY to each other. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS pursuant to Title 21, U.S. Code, Section 841 to commence upon expiration of confinement.....Cooper, J. Issued commitment 12-9-75.

PROCEEDINGS

Jude

- 2-3-75 ANTHONY SOLDANO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on each of Counts 1 and 9 to run concurrently with each other. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....Cooper,J.
Issued commitment 12-9-75.
- 2-3-75 JOSEPH MAGNANO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1. FIFTEEN (15) YEARS on Count 2 to run CONSECUTIVELY to sentence imposed on Count 1. FIFTEEN (15) YEARS on Count 3 to run concurrently with sentence on Counts 1 and 2. FIFTEEN (15) YEARS on Count 4 to run concurrently with sentence on Counts 1 and 2. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement, pursuant to (Title 21 Section 841, U.S. Code.)...Cooper,J.
Issued commitment 12-10-75.
- 2-3-75 FRANK PALLATTA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1. FIFTEEN (15) YEARS on Count 2 to run CONSECUTIVELY to sentence imposed on Count 1. FIFTEEN (15) YEARS on Count 3 to run concurrently with sentence on Counts 1 and 2. FIFTEEN (15) YEARS on Count 4 to run concurrently with sentence on Counts 1 and 2. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement, pursuant to (Title 21 Section 841, U.S. Code)....Cooper,J.
Issued commitment 12-10-75.
- 2-3-75 JOHN GWYNN-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on each of counts 1,10 and 16 to run concurrently with each other. Deft. placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement. The sentence imposed herein is to run concurrently with the state probation violation.....Cooper,J.
Issued commitment 12-10-75.
- 2-3-75 ANTHONY DeLUTRO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY-FIVE (25) YEARS on each of Counts 1 and 8 to run concurrently with each other. The deft. is placed on SPECIAL PAROLE for a period of SIX (6) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....Cooper,J.
Issued commitment 12-10-75.
- 12-10-75 ANTHONY DeLUTRO-Filed deft's. affidavit & notice of motion for reduction of sentence.
- 12-10-75 ANTHONY DeLUTRO-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. (Mailed copies to Anthony DeLutro, M.C.C., 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office).
- 12-12-75 ANTHONY SOLDANO-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. Mailed copies to Anthony Soldano, 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.

PROCEEDINGS

12-12-75 RICHARD BOLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed Defts'. notice of appeal from the judgments of conviction entered on 12-3-75. Mailed copies to Defts. at 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.

12-15-75 ANTHONY DeLUTRO-Filed Govt's. affidavit in opposition to deft's. motion for reduction of sentence.

12-16-75 JOHN GWYNN-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. Copies mailed to John Gwynn, 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.

12-19-75 ANTHONY SOLDANO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.

12-19-75 RICHARD BOLELLA-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.

12-19-75 JOHN GWYNN-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.

12-19-75 ANTHONY DeLUTRO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.

12-19-75 FRANK PALATTA-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.

12-19-75 JOSEPH MAGNANO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.

12-29-75 RICHARD BOLELLA-Filed Deft's. affidavit & notice of motion for bail pending appeal.

12-29-75 JOSEPH MAGNANO & FRANK PALATTA-Filed Defts'. affidavit & notice of motion for bail pending appeal.

-1-07-76 JOSEPH MAGNANO, FRANK PALATTA, RICHARD BOLELLA & ANTHONY DE LUTRO: Filed Order that deft's. motion for a new trial based on newly discovered evidence is denied.... Cooper, J. (mailed notice)

A TRUE COPY

RAYMOND P. BURCHARDT

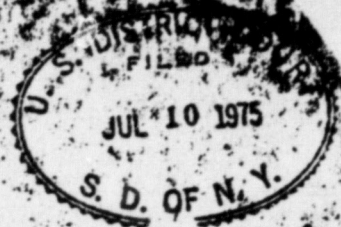
By

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-



✓ JOSEPH MAGNANO, a/k/a "Joe the Grind",
✓ FRANK PALLATTA, a/k/a "Bolot", and a/k/a "Nose",
✓ RICHARD BOLELLA,
LOUIS MACCHIAROLA, a/k/a "Red Hot",
MICHAEL CARBONE,
DOMINIC TUFARO, a/k/a "Donnie Boy",
FRANK FERRARO, a/k/a "Skooch",
✓ CARMINE MARGIASSO, a/k/a "Charlie",
✓ ANTHONY DeLUTRO, a/k/a "Tony West",
✓ ANTHONY SOLDANO, a/k/a "Tony",
JOSEPH MALIZIA, a/k/a "Patsy Pontiac",
ERNEST MALIZIA,
FRANK CARAVELLA,
✓ JOHN GWYNN,
✓ WILLIAM CHAPMAN, a/k/a "Chappy",
ST. JULIAN HARRISON,
FRANK LUCAS,
✓ GERARD CACHOLAN, a/k/a "Coco",
✓ ROBERTO RIVERA, and
✓ GABRIEL RODRIGUEZ, a/k/a "Cass",
a/k/a "Cassanova",

75 CRIM 687

INDICTMENT

S 75 Cr.

Defendants.

The Grand Jury charges:

From on or about the 1st day of January, 1973
and continuously thereafter up to and including the date
of the filing of this indictment, in the Southern District
of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK
PALLATTA a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA,
LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC
TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch",
CARMINE MARGIASSO a/k/a "Charlie", ANTHONY DeLUTRO a/k/a

"Tony West", ANTHONY SOLDANO a/k/a "Tony", JOSEPH MALIZIA a/k/a "Patsy Pontiac", ERNEST MALIZIA, JOHN GWYNN, WILLIAM CHAPMAN a/k/a "Chappy", ST. JULIAN HARRISON, FRANK LUCAS, GERARD CACHOLAN a/k/a "Coco", ROBERTO RIVERA, and GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", the defendants, and Frank Caravella, Alex Pulphus, Joseph Condella, Jose Ramos, Mario Perna, and Anthony Verzino, named herein as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agree together and with each other to violate Section 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the conspiracy and to effect the objects thereof the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about February 1973 defendant ERNEST MALIZIA met co-conspirator Mario Perna at the Evergreen Bar at 4905 Fifth Ave., Brooklyn, New York and had a conversation.

2. In or about February 1973 defendants ERNEST MALIZIA and FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", met in the Bronx, New York and rode in an automobile.

3. In or about March 1973 defendant FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", met defendant ERNEST MALIZIA and co-conspirator Mario Perna at the Raceway Diner in Yonkers, New York and discussed narcotics.

4. In or about March 1973 defendant FRANK FERRARO a/k/a "Skooch" delivered a package containing approximately 2 kilograms of heroin to defendant ERNEST MALIZIA and co-conspirator Mario Perna on Allerton Avenue, Bronx, New York.

5. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately one-quarter kilogram of heroin to defendant JOHN GWYNN.

6. In or about March, 1973 defendant WILLIAM CHAPMAN a/k/a "Chappy" introduced co-conspirator Mario Perna and defendant ERNEST MALIZIA to defendant ST. JULIAN HARRISON

7. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna paid approximately \$20,000 to defendants DOMINIC TUFARO a/k/a "Donnie Boy", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", and FRANK FERRARO a/k/a "Skooch".

8. In or about March, 1973 co-conspirator Mario Perna and defendant ERNEST MALIZIA received a package containing approximately 4 kilograms of heroin from FRANK FERRARO a/k/a "Skooch".

9. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately 3 kilograms of heroin to defendant ST. JULIAN HARRISON.

10. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna paid defendants JOSEPH MAGNANO a/k/a "Joe the Grind", DOMINIC TUFARO a/k/a "Donnie Boy", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", and FRANK FERRARO a/k/a "Skooch" approximately \$20,000.

11. In or about April 1973 defendant FRANK LUCAS paid co-conspirator Mario Perna and defendant ERNEST MALIZIA approximately \$56,000.

12. In or about April, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately one-eighth kilogram of heroin to defendant GERARD CACHOLAN a/k/a "Coco".

13. In or about September, 1973 co-conspirators Mario Perna and Anthony Verzino and defendant ERNEST MALIZIA met and had a conversation.

14. In or about September, 1973 defendant GERARD CACHOLAN a/k/a "Coco" introduced defendant ROBERTO RIVERA to co-conspirator Mario Perna and defendant ERNEST MALIZIA.

15. In or about September, 1973 co-conspirator Mario Perna delivered a package containing approximately two kilograms of heroin to defendant ROBERTO RIVERA at the Pathmark Shopping Center near Bruckner Boulevard and White Plains Road, Bronx, New York.

16. In or about October, 1973 defendant RICHARD BOLELLA met co-conspirator Mario Perna and had a discussion about reducing the price being paid for the heroin.

17. In or about November 1973 defendants FRANK FERRARO a/k/a "Skooch" and CARMINE MARGLIASSO a/k/a "Charlie" delivered a package containing approximately 12 kilograms of heroin to co-conspirator Mario Perna at the Cross County Shopping Center, Yonkers, New York.

18. In or about November, 1973 defendant ANTHONY DeLUTRO a/k/a "Tony West" delivered a package containing approximately 5 kilograms of heroin to co-conspirator Anthony Verzino.

19. On or about December 1st, 1973 co-conspirator Mario Perna and defendant ERNEST MALIZIA delivered a package containing approximately 10 kilograms of heroin to defendant FRANK LUCAS at the Van Cortlandt Motel, Bronx, New York.

20. In or about November, 1973 co-conspirator Anthony Verzino paid defendant ANTHONY DeLUTRO a/k/a "Tony West" approximately \$250,000 in two installments.

21. In or about January 1974 defendant ANTHONY SOLDANO a/k/a "Tony", delivered a package containing approximately 3 kilograms of heroin to co-conspirator Anthony Verzino in Queens, New York.

22. On or about January 15, 1974, defendant JOHN GWYNN distributed approximately 148.5 grams of heroin in or near Apartment 5C, 1065 Jerome Avenue, Bronx, New York.

23. On or about February 25, 1974 co-conspirators Frank Caravella and Anthony Verzino possessed approximately 26 pounds of heroin at 1130 Pelham Parkway, Bronx, New York.

24. On or about January 28, 1975, the defendant FRANK LUCAS possessed approximately \$584,705 in cash at 933 Sheffield Road, Teaneck, New Jersey.

(Title 21 United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

In or about March 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch", and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 2 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

THIRD COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLLELA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy" FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 4 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

FOURTH COUNT

The Grand Jury further charges:

In or about November, 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Domie Boy", FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 12 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.)

FIFTH COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, ST. JULIAN HARRISON and FRANK LUCAS the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

SIXTH COUNT

The Grand Jury further charges:

In or about October, 1973 in the Southern District of New York, FRANK LUCAS the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute Schedule I and II narcotic drug controlled substances, to wit, approximately 4 kilograms of heroin and 2 kilograms of cocaine.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A))

SEVENTH COUNT

The Grand Jury further charges:

On or about the 1st day of December, 1973 in the Southern District of New York, FRANK LUCAS the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 10 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

EIGHTH COUNT

The Grand Jury further charges:

In or about November, 1973 in the Southern District of New York, ANTHONY DeLUTRO a/k/a "Tony West", the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 5 kilograms of heroin

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).)

NINTH COUNT

The Grand Jury further charges:

In or about January, 1974 in the Southern District of New York, defendants ANTHONY SOLDANO a/k/a "Tony", and JOSEPH MALIZIA a/k/a "Patsy Pontiac" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a) (1) and 841(b) (1) (A) Title 18, United States Code, Section 2.)

TENTH COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, JOHNNY GWYNN the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A).)

ELEVENTH COUNT

The Grand Jury further charges:

In or about April, 1973 in the Southern District of New York, GERARD CACHOLAN a/k/a "Coco" the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-eighth kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A).)

TWELFTH COUNT

The Grand Jury further charges:

In or about September, 1973 in the Southern District of New York, ROBERTO RIVERA the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A).)

THIRTEENTH COUNT

The Grand Jury further charges:

In or about December 1973 in the Southern District of New York FRANK CARAVELLA the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A).)

FOURTEENTH COUNT

The Grand Jury further charges:

On or about October 30, 1973, in the Southern District of New York, the defendant, JOHN GWYNN, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, 159.5 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A); Title 18 United States Code, Section 2.)

FIFTEENTH COUNT:

The grand jury charges that:

On or about the 20th day of December, 1973, in the Southern District of New York JOHN GWYNN, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, 151.5 grams of cocaine.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

SIXTEENTH COUNT

The Grand Jury further charges:

On or about the 15th day of January, 1974 in the Southern District of New York, JOHN GWYNN, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, 148.5 grams of heroin.

(Title 21, United States Code, Section 812 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

SEVENTEENTH COUNT

The Grand Jury further charges:

In or about March 1971, in the Southern District of New York, GABRIEL RODRIGUEZ, a/k/a "Case", a/k/a "Cassanova", the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1/8 kilogram of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).)

X. M. Dove
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

Indictment #75CR687

-against-

NOTICE OF MOTION

ANTHONY SOLDANO,

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE, that upon the annexed Affidavit of ROBERT BLOSSNER, duly sworn to the 15th day of August, 1975, upon the indictment herein, and upon all other proceedings heretofore had herein, the undersigned will move this Court on behalf of the defendant, ANTHONY SOLDANO, in the indictment herein, before the HON. IRVING BEN COOPER, United States District Judge for the Southern District of New York, at the United States Courthouse, located at Foley Square, New York City, New York, at a time prior to August 29, 1975, to be set by the Court as convenient, for counsel to be heard in support of a motion for an order:

- I. Granting defendant, ANTHONY SOLDANO, a Bill of Particulars pursuant to Rule 7(F) and certain Discovery pursuant

to Rule 16 of the Federal Rules of Criminal Procedure setting forth:

(a) The dates, places and times it will be alleged that defendant, ANTHONY SOLDANO, met with and/or combined, conspired, confederated or agreed with other persons to commit acts in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code, under Count One, of the Indictment.

(b) The times, dates and places it will be alleged that the acts which will be alleged defendant, ANTHONY SOLDANO, committed by which the Government will seek to establish that he "knowingly did distribute and possess with intent to distribute" narcotic drugs as charged in Count Nine of the Indictment, whether it will be alleged defendant, ANTHONY SOLDANO, benefitted from this "business", and if so, what benefit he received, when and where he received it, and in what form it was received.

(c) Copies of any and all statements, admissions and confessions alleged to have been made by the defendant, both written and oral.

(d) Any and all items and information, exculpatory in nature and helpful to the defense pursuant to Brady v. Maryland, 373 U.S. 83.

(e) Disclosure of information concerning searches and/or seizures of chattels pursuant to Rule 41(e) Federal Rules of Criminal Procedure.

(f) Disclosure of information concerning wire tapping, electronic interception and bugging.

(g) Disclosure of all information concerning pre-trial identification procedures and events, including but not limited to the identification of one "Anthony Visconti" as the defendant herein, in Indictment 75CR24 which preceded the instant indictment.

(h) Disclosure of all information concerning arrests, convictions, pending prosecutions and memoranda concerning decisions of declination to prosecute prospective government witnesses.

(i) Whether any of the co-defendants or co-conspirators will be used as witnesses against the defendant or were used in any capacity prior to the return of this superceding indictment to gather

evidence against the other defendants. This information must be supplied to the defendant at this time in order to protect the rights under the Fourth, Fifth and Sixth Amendments of the United States Constitution. Such information is necessary in order that this defendant does not confer with any such persons or discuss his trial strategy with ^{them.} with/

(j) State any overt acts not enumerated in the indictment concerning which acts the Government intends to offer evidence upon the trial of the Indictment herein.

(k) State as to each overt act how the alleged act furthered the conspiracy.

AS TO THE ENTIRE INDICTMENT

(l) Counsel joins in the request for any other details or particulars made by any of the other co-defendants through their counsel relating to this Indictment just as if those requested demands were fully set forth herein, as long as said demands are not inconsistent with the request made of the defendant herein.

AS TO SUPPRESSION OF IDENTIFICATION

II. Granting defendant, ANTHONY SOLDANO, a hearing to determine the admissability of any testimony as to his identity pursuant to Rule 41 of the Federal Rules of Criminal Procedure, and for a further order, suppressing for the use at the trial of any identification or testimony of identification that upon such inquiry by the Court will prove to be the results of tainted or unlawfully suggestive practices.

ADDITIONAL MOTIONS

III. Depending on the Court's granting of the relief requested under this Motion, your deponent specifically reserves the right of this defendant to make further and additional Motions which may be required and advisable in light of this Court's ruling on the other relief sought herein. The defendant further joins in all the Motions made on behalf of his co-defendants and specifically requests that the relief applied for in those Motions be granted to him where it is not inconsistent with the relief he has requested in this Motion; and

It is further requested that this Court grant

other and further relief as is just under all of the circumstances of this case.

Dated: New York, New York
August 15, 1975.

Yours, etc.

ROBERT BLOSSNER
Attorney for ANTHONY SOLDANO
250 Broadway
New York, New York 10007

TO: HON. IRVING BEN COOPER
United States District Court Judge
Southern District of New York
Foley Square
New York, New York 10007

UNITED STATES ATTORNEY
Southern District of New York
Att: Mr. Amoroso
One St. Andrew's Plaza
New York, New York 10007

-against-

**AFFIDAVIT IN SUPPORT
OF MOTION TO DISMISS**

ANTHONY SOLDANO.

Defendant.

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ROBERT BLOSSNER, being duly sworn, deposes and says:

That I am the attorney for ANTHONY SOLDANO and as such am fully familiar with all of the facts and proceedings heretofore had herein, and make this affidavit in support of this omnibus motion.

That in order to properly defend the defendant, SOLDANO,
it is required that the defense be furnished with a Bill of
Particulars and Discovery setting forth the information requested
in Defendant's Notice of Motion, paragraphs "I(a) through (1)"
for the following reasons respectively:

I have read the Indictment, including that portion

labeled "Overt Acts" and nowhere does it contain any specific information relating to the participation of the defendant, SOLDANO, in the conspiracy subject of Count One of the Indictment. Defendant is unable to make his defense to this Count of the Indictment, without being apprised of the times, dates and places it will be alleged that he entered into or pursued the alleged conspiracy. The mere statement under paragraph 21 of "Overt Acts" that defendant, SOLDANO, is alleged to have "delivered" another with certain drugs in no way answers this request. This branch of defendant's demand for a Bill of Particulars and Discovery relates specifically to alleged meetings, conversation or other means by which the Government will seek to show that defendant, SOLDANO, knowingly entered into the conspiracy charge. The word "delivered" is a broad and imprecise term, not calculated to inform defendant of the actual acts he is alleged to have committed.

With respect to all the items sought in paragraphs "(a" through"(1)" of defendant's Notice of Motion, it is respectfully submitted that defendant's right to the information sought and its materiality and relevance to the defense has been so well

established by statute and case law that no detailed argument on behalf of its production should be required.

**DEFENDANT'S REQUEST FOR EXCULPATORY
MATTER AND FOR ITEMS HELPFUL TO THE
DEFENSE SHOULD BE GRANTED.**

This portion of the motion is based upon authorities such as Brady v. Maryland, 373 U.S. 83 (1963) and Giles v. Maryland, 386 U.S. 66 (1967).

This application is made prior to trial under the authority of United States v. Cobb, 271 F. Supp. 159, 1963 (S.D.N.Y. 1967) (Mansfield, D. J.) and United States v. Gleason, 265 F. Supp. 880 (S.D.N.Y. 1967) (Frankel, D.J.). As Judge Mansfield pointed out in Cobb, *supra*, at p. 163:

"There may be instances where disclosure of exculpatory evidence for the first time during trial would be too late to enable the defendant to use it effectively in his own defense, particularly if it were to open the door to witnesses or documents requiring time to be marshalled and presented."

Judge Frankel came to a similar conclusion in Gleason, *supra*, 265 F. Supp. at pp. 884-886:

"...(W)here the prosecutor knows of witnesses potentially useful to the defense, does not intend to call such witnesses himself, and knows or should reasonably be expected to suppose that his knowledge is not shared by defense counsel, the information may come too late for effective preparation if not delivered until the case is on trial...other kinds

of instances will arise where the Government 'has in its exclusive possession specific, concrete evidence' (footnote omitted) of a nature requiring pre-trial disclosure to allow for full exploration and exploitation by the defense."

ARRESTS AND CONVICTIONS OF GOVERNMENT WITNESSES.

That with respect to defendant's application for any and all information exculpatory in nature and helpful to the defense in the possession of the Government, it is required in this connection that defendant be furnished with copies of arrest and conviction records of each of the Government witnesses herein, together with any other material concerning them that bears upon their credibility. In this connection, it is also required that defendant be furnished with all inconsistent statements and memoranda of all inconsistent statements of Government witnesses herein relating to their expected trial testimony, together with all other information known to the Government which may be helpful to the defense or exculpatory in nature.

As recommended by the American Bar Association Project on Minimum Standards for Criminal Justice, Discovery and Procedures before Trial, Ten. Dr - 1969 pp. 56-58, the defendant respectfully requests the Government to disclose to the defendant names and statements of all Government witnesses before trial, rather than under Title 18, Sec. 3500, at trial.

Many States have statutes or rules which require that the accused be notified prior to trial of the witnesses to be called against him. See Preliminary Draft of Proposed Amendments to the Federal Rules of Criminal Procedure for the United States District Courts, pp. 51-52; and there is no reason whatever in this case why the Government should refuse to at least disclose the names and addresses and convictions, if any, of the witnesses the Government intends to call against the defendant. This draft "while not binding on the Federal Courts, reflects the views of a distinguished committee, which at all times have been headed by a Federal Judge." United States v. Korenfeld, (E.D.N.Y. 3/2/70).

**DEFENDANT'S APPLICATION FOR DISCLOSURE AS
TO SEARCHES AND SEIZURES SHOULD BE GRANTED.**

That with respect to these sections of defendant's Notice of Motion, requesting information relative to searches and seizures, electronic surveillance, and pre-trial identification procedures, it is respectfully submitted that full disclosure of the materials sought is appropriate and required in order to enable defense counsel to make applicable pre-trial motions for hearings and suppression in each instance if appropriate.

It cannot be disputed that evidence obtained by the Government in violation of the Fourth Amendment, is not admissible

in a Federal criminal case. Weeks v. United States, 232 U.S. 383 (1913). Based upon the particular disclosure requested herein, if appropriate, counsel for defendant will move pursuant to Rule 41(e), Federal Rules of Criminal Procedure, for a pre-trial suppression hearing and for a subsequent order of suppression.

DEFENDANT'S APPLICATION FOR DISCLOSURE CONCERNING ELECTRONIC EAVESDROPPING SHOULD BE GRANTED.

With respect to the defendant, SOLDANO, it is required that the Government state, (1) whether there was any wire tapping, electronic interception or bugging, (2) where, (3) when, (4) the persons whose words were overheard or recorded, (5) that the Government furnish copies of the tapes, memoranda and logs made, and (6) annex copies of any applications for Court authorization for interception and copies of any returns made thereon.

This request is clearly proper. See Black v. United States, 385 U.S. 26 (1966); Schipani v. United States, 385 U.S. 372 (1967). The Government no longer has the option of deciding whether electronically overheard conversations are relevant to the prosecution; - all must be disclosed. Kolod v. United States, 390 U.S. 136 (1968); Alfman v. United States, 22 L. Ed 2d 176 (1969); Katz v. United States, 389 U.S. 347.

**DEFENDANT IS ENTITLED TO DISCLOSURE OF
THE REQUESTED IDENTIFICATION ITEMS.**

It is required on behalf of the defendant, SOLDANO, that the Government state, (1) whether there was any line-up, show-up or viewing of photographs in this case, openly or secretly, (2) where, (3) when, (4) of whom, (5) by whom.

Pre-trial relief should be granted in the applicable circumstances. United States v. Wade, 388 U.S. 218; Gilbert v. California, 388 U.S. 263; Stovall v. Denno, 388 U.S. 293.

The disclosure concerning identification issues, should embrace, but should not be limited to, a consideration as to the use of "mug shots" or other photographs as part of pre-trial identification procedures or pre-trial preparation sessions. Simmons v. United States, 390 U.S. 377; United States ex. rel. Rivera v. McKendrick, 488 F. 2d 30 (2d Cir., 1971); United States v. Famulari, 447 F. 2d 1377 (2d Cir., 1971); and see, People v. Ballott, 20 N.Y. 2d 600.

CONCLUSION

It is not unlikely that the trial of the within matter may be a protracted one. In any event the crimes charged are serious and the within matter must be carefully prepared on behalf of defendant SOLDANO, both with respect to weaknesses in the

Government's case and with respect of any affirmative defenses which lie. The information sought herein is vital and material to the proper defense of this action, and the material sought should be submitted to defense counsel before the trial so that if upon examination, additional relief is required, the necessary time will be available to make such additional application.

WHEREFORE, your deponent respectfully prays that the within application be granted in all respects, altogether with such other, further and different relief as to this Court may seem just and proper in the premises.



ROBERT BLOSSNER

Sworn to before me this
15th day of August, 1975.

NOTARY PUBLIC
No. 2040
Qualified in New York
Certificate filed with N.Y. State
Commission expires March 77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

-against-

ANTHONY SOLDANO, allegedly named
as ANTHONY VISCONTI,

Defendant.
-----X

Indictment #75Cr24

NOTICE OF MOTION

S I R :

PLEASE TAKE NOTICE, that upon the annexed Affidavit of ROBERT BLOSSNER, duly sworn to the 24th day of May, 1975, upon the indictment herein, and upon all other proceedings heretofore had herein, the undersigned will move this Court on behalf of the defendant, ANTHONY SOLDANO, alleged to be named as ANTHONY VISCONTI in the indictment herein, before the HON. IRVING BEN COOPER, United States District Judge for the Southern District of New York, at the United States Courthouse, located at Foley Square, New York City, New York, at a time to be set by the Court as convenient, for counsel to be heard in support of a motion for an order dismissing all proceedings and the instant indictment as to ANTHONY SOLDANO.

Dated: New York, New York
May 24, 1975

Yours, etc.

ROBERT BLOSSNER
Attorney for ANTHONY SOLDANO
250 Broadway
New York, New York 10007

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TO: UNITED STATES ATTORNEY
Southern District of New York
Att: Mr. Amoroso

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA

-against-

**AFFIDAVIT IN SUPPORT
OF MOTION TO DISMISS**

ANTHONY SOLDANO, allegedly named
as ANTHONY VISCONTI,

Defendant.

----- -x
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ROBERT BLOSSNER, being duly sworn, deposes and says:

FIRST: That I am the attorney for ANTHONY SOLDANO and
as such am fully familiar with all of the facts and proceedings
heretofore had herein, and make this affidavit in support of this
motion to dismiss.

SECOND: On May 8th, 1975 ANTHONY SOLDANO was arrested
by agents of the Drug Enforcement Administration. He was held in
that status, not being able to post bail until he was arraigned
in the District Court on May 19, 1975. At the time of the ar-
raignment, MR. SOLDANO had been in custody some twelve (12) days
without a hearing before the Magistrate, and without being
properly indicted.

THIRD: At the arraignment, MR. SOLDANO was asked to plead to an indictment which charged one ANTHONY VISCONTI. MR. SOLDANO stated he had never used the name VISCONTI nor had he been known by that name. The United States Attorney further stated that an error had been committed by the Grand Jury, that the Grand Jury had in fact intended to indict MR. SOLDANO and that the Government was not contending in any way that MR. SOLDANO was also known as, or had used the name VISCONTI.

FOURTH: This Court did not properly arraign MR. SOLDANO as he has never in fact been indicted by a Grand Jury. MR. SOLDANO through counsel objected to the entry of a plea in his behalf at the time of the arraignment.

FIFTH: On May 16, 1975 MR. SOLDANO was brought before the HON. INZER WYATT, United States District Court Judge for the Southern District, in Room 506, arraignment part of this court. JUDGE WYATT refused to arraign MR. SOLDANO on the same set of circumstances on this very indictment.

SIXTH: The United States Attorney herein has in fact substituted his conclusions as that of being the will of the Grand Jury. MR. SOLDANO has neither waived indictment, nor consented to these proceedings in any way.

SEVENTH: It has never been established in any way, shape or form that ANTHONY SOLDANO was in fact the party considered by the Grand Jury to be ANTHONY VISCONTI. It has in fact been inferred that erroneous material was presented to the Grand Jury.

EIGHTH: In light of the above stated facts, the only action that can remedy the denial of due process is dismissal of the indictment as to ANTHONY SOLDANO, with leave to resubmit before a new Grand Jury, or in the alternative, for an evidentiary hearing as to what information before the Grand Jury linked ANTHONY SOLDANO to the instant indictment.

WHEREFORE, your deponent respectfully prays that the within application be granted in all respects, all together with such other, further and different relief as to this Court may seem just and proper in the premises.

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ROBERT BLOSSNER

Sworn to before me this
24th day of May, 1975.

JULIUS REINLIEB
Notary Public, State of New York
No. 41-324660 Queens County
Cert. Filed in Kings County
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :
 :
 -v- : AFFIDAVIT in OPPOSITION
 : and RESPONSE
 ANTHONY SOLDANO, et al., : S 75 Cr. 687 (IBC)
 Defendants. :

DOMINIC F. AMOROSA, being duly sworn deposes and
says:

1. I am an Assistant United States Attorney in the Southern District of New York and make this affidavit in opposition and response to the motion filed by defendant Soldano for a Bill of Particulars and Discovery.

2. The Government has previously filed with the Court a Bill of Particulars and a Supplemental Bill of Particulars in addition to a Memorandum of Law in Opposition to identical Motions of other defendants in which most of defendant Soldano's demands have been answered.

3. Defendant's demands under the guise of seeking a Bill of Particulars amount to a device by which he seeks to compel disclosure of the Government's entire case against him including, but not limited to, a recitation of all overt acts in which he engaged in furtherance of the conspiracy in addition to those specifically outlined in the indictment and Bill of Particulars. Such demands are not within the scope of a Bill of Particulars. United States v. Rebron, 222 F.2d 531, 535-36 (2d Cir.) cert denied 350 U.S. 876 (1956). A Bill

of Particulars is limited to informing defendant of the charge against him with sufficient precision to enable him to prepare his defense and avoid surprise and enabling defendant to plead double jeopardy to future charges.

Hong Tai v. United States, 273 U.S. 77, 82 (1927). This has already been achieved by the Indictment and the Government's prior responses. Nor is defendant entitled to the names of Government witnesses under the guise of a Bill of Particulars. Mize v. United States, 422 F.2d 509 (10th Cir. 1969); United States v. Glass, 421 F. 2d 832 (9th Cir. 1969).

4. The Government is aware of its obligations under Brady v. Maryland, 373 U.S. 83 (1963) and will comply with those obligations if and when the facts warrant it.

5. Defendant Soldano's identity was established by means of photographic identification.

6. Defendant Soldano was not the subject of electronic surveillance with respect to this case

7. Defendant will have ample opportunity to question Government witnesses with respect to their testimony at trial.

DOMINIC F. AMOROSA
Assistant United States Attorney

Sworn to before me this
day of

REQUEST TO CHARGEIDENTIFICATION

44-62-271

One of the most important issues in this case is the identification of the defendant, SOLDANO, as the perpetrator of the crime. The prosecution has the burden of proving identity, beyond a reasonable doubt. It is not essential that the witness himself be free from doubt as to the correctness of his statement. However, you the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict him. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

Identification testimony is an expression of belief or impression by the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

"Identification Testimony should be considered with great caution" and "no class of testimony is more uncertain and less to be relied on than that as to identity" United States v. Edward, 439 F. 2d 150, 151 (3rd Cir. 1971).

"It must be recognized that improper employment of photographs by police may sometimes cause witnesses to err in identifying criminals. A witness may have obtained only a brief glimpse of a criminal, or may have seen him under poor conditions. Even if the police subsequently follow the most correct photographic identification procedures and show him the pictures of a number of individuals without indicating whom they suspect, there is some danger that the witness may make an incorrect identification.....
Regardless of how the initial misidentification comes about the witness thereafter is apt to retain in his memory the image of the photograph rather than of the person actually seen, reducing the trustworthiness of subsequent lineup or courtroom identification."
Simmons v. United States, 390 U.S. 377 (383,4)

In appraising the identification testimony of a witness, you should consider the following:

(1) Are you convinced that the witness had the capacity and an adequate opportunity to observe the offender? Whether the witness had an adequate opportunity to observe the offender at the time of the offense will be affected by such matters as how long or short a time was available, how far or close the witness was, how good were the lighting conditions, whether the witness had had occasion to see or know the person in the past.

(2) You must consider the credibility of the identification witness in the same way as any other witness; consider whether he is truthful, and consider whether he had the capacity and opportunity to make a reliable observation on the matter covered in his testimony.

Under our law, the identification of an accused by a single witness as the one involved in the commission of a crime is in and of itself sufficient to justify a conviction of such person, provided, of course, you are satisfied beyond a reasonable doubt of the identity of the accused as the one who committed the crime and that the elements of the crime have been proved.

Identification is a question of fact for you to decide in the light of all the testimony but I again emphasize that the burden of proof on the prosecutor extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the perpetrator of the crime with which he stands charged. If after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

Respectfully Submitted,

ROBERT BLOSSNER
Attorney for Defendant,
ANTHONY SOLDANO

1 GW26
2 experience many times those devices have been of very
3 poor quality. So that you don't need to worry about it.
4 I will examine it before it is allowed into evidence.

5 MR. EPSTEIN: Very well, your Honor.

6 MR. HERWITZ: Your Honor, I have no motions but
7 I have a matter I want to take up before you conclude, but
8 not now.

9 THE COURT: Just wait with me. I know what you
10 have in mind.

11 Is there anything else by any of the attorneys,
12 the New York attorneys? And then I will call on some
13 attorneys from New Jersey, but I think you all ought to be
14 heard because it relates to your client or clients.

15 MR. BLOSSNER: Anthony Soldano was somehow
16 erroneously indicted as Anthony Visconti --

17 THE COURT: Didn't I have that up before me? Didn't
18 I resolve that?

19 MR. BLOSSNER: Yes. I am getting to the point.
20 During the discussion on that, it was disclosed to the
21 Court that Anthony Soldano was identified by a photograph.
22 In my pretrial motion, I asked for a hearing to determine
23 whether that photograph for identification was so inherently
24 unfair it would taint an in-court identification in this
25 trial.

1 Your Honor ruled on that, but in his ruling cited
2
3 Simmons v U.S., which I cited.

4 I would ask the Court at this time -- first of
5 all, I take exception to your Honor's ruling, but I ask
6 the Court to reconsider and allow us a short inquiry to
7 determine just how that photograph of identification came
8 about.

9 THE COURT: I get your point.

10 What do you say to that?

11 MR. AMOROSA: We object to that and we ask your
12 Honor to stand by your prior ruling in connection with this
13 in that there was no suggestive photograph shown to any
14 witness in this case and that will be clear when the witness
15 takes the witness stand and testifies as to his relation-
16 ship with Mr. Soldano.

17 THE COURT: Now look here, I want, when we get
18 going with the trial, to see to it that the jury is given
19 a full day's work. Then we will have to get together,
20 gentlemen, on some of these matters such as the one Mr.
21 Blossner just referred to. Bring it up again, but let's
22 bring it up at a time when the jury is not here and we are
23 not inconveniencing them and we will resolve all these
24 issues. In other words, I am giving you permission to
25 resubmit that. I am not chopping you off. If you can show

1 GW28

2 me I made a mistake, that's your job. So you go after it
3 at the appropriate time.

4 What I have just said applies to all of you. I
5 count on you as attorneys who I regard highly to help
6 yourselves as well as the Judge. Our main business, after
7 all, is to see that these people in the box are kept
8 serene, comfortable, so that they can follow what's going
9 on and not burden them with a lot of interruptions. Let
10 them hear the free flow of the testimony so they don't get
11 balled up, and then we can get together as lawyers and
12 Judge on matters that the jury has nothing to do with
13 and we can resolve them without these many interruptions.

14 I'm for that. I can't prevent you from jumping
15 up, "I object." You should do it. All I am saying is
16 try to work it out in such a way that matters such as what
17 we have taken up today are brought up, resubmitted, as I
18 have given you permission, and resolved in the absence of
19 the jury at a time that does not interfere with the taking
20 of testimony.

21 MR. J. PANZER: Your Honor, I have received a
22 letter from Mr. Amorosa in connection with cross examination
23 if my client takes the stand. I evidently misplaced the
24 letter. I would like a copy from Mr. Amorosa because my
25 client may take the stand and does have some prior convictions

1 gwl 3

2 THE COURT: Very well. Ten-minute recess.

3 MR. HOFFMAN: May I make one request of the
4 Court? Mr. Lucas has some medication he should be getting.

5 THE COURT: I will direct him to do exactly
6 that. Short recess. See that the marshals do what they
7 can.

8 (Recess.)

9 (In open court - jury present.)

10 THE COURT: Before you call your first witness,
11 marshal, see to it that that corridor leading to my robing
12 room is free of anybody but the lawyers. No one is allowed
13 in there and please do it that nobody interferes with the
14 going and coming from the jury room of the jurors. It is
15 very important.

16 THE MARSHAL: Yes, sir.

17 THE COURT: Call your first witness.

18 MR. AMOROSA: The government calls Mario
19 Perna to the witness stand.

20 M A R I O P E R N A, called as a witness on behalf
21 of the government, being first duly sworn, testified as
22 follows:

23 THE COURT: Mr. Perna, you have been called as
24 a witness to give testimony under oath. What I am about to
25 say to you I say to every witness in every case.

mdlt 10

MR. GOLDBERG: Correct, your Honor.

THE COURT: So you will make him available.

MR. BLOSSNER: We seem to be moving along rapidly. If I understand Mr. Amorosa's opening this witness may be called upon to identify much in the same fashion he identified other witnesses Mr. Soldano. If you will remember I asked the Court to inquire as to any photographic identification of Mr. Soldano to see if it is tainted as to Simmons, his in-court identification.

THE COURT: What do you want of me now? The man just got started on his testimony. Can't you hold it until we come closer?

MR. BLOSSNER: From Mr. Amorosa's opening it might be early tomorrow morning.

MR. AMOROSA: It won't be early tomorrow morning and I will speak to Mr. Blossner tomorrow morning.

THE COURT: When you see the red signal, holler.

MR. BLOSSNER: Sometimes I'm a little color blind.

THE COURT: No, you're not, you're on your toes. Anything else?

MR. AMOROSA: That's all I have, your Honor.

THE COURT: All right, gentlemen, stand by, please.

mpbr

Perna-direct

824

1
2 Steak & Brew?

3 A Yes, we did.

4 Q What did you give him?

5 A A sample of cocaine.

6 Q A sample of what?

7 A Cocaine.

8 Q Where did you get the cocaine?

9 A It was left over from the two kilos I had
10 previously brought earlier in our transaction.

11 Q Two kilos you cut up?

12 A Yes, sir.

13 Q From which you made the two kilos that you gave
14 to Lucas?

15 MR. HOFFMAN: I object to leading.

16 THE COURT: Objection overruled.

17 What is your answer?

18 A Yes, sir.

19 Q After your proposal to kill Anthony Verzino to
20 Condella in January of 1974 were you still seeing this
21 fellow Verzino in connection with your heroin business?

22 A Yes, sir, I was.

23 Q Did there come a time when Anthony Verzino spoke about
24 additional pure goods for what now was your partnership
25 with Verzino?

mpbr

Perna-direct

825

1
2 A Yes, sir.

3 Q When was that?

4 A Some time during the middle part of January
5 or latter part of January.

6 Q Of what year?

7 A 1974.

8 Q Where was it?

9 A At the Jackson Steak House on Fordham Road in
10 the Bronx.

3 11 Q Who was present besides yourself and Verzino?

12 A No one else.

13 Q What was said?

14 A Verzino had told me, asked me how much money I had
15 on hand at that time and how much money I could get together
16 at that time. I told Verzino I had approximately 30 or
17 \$35,000 on hand at that time.

18 He wanted me to bring it the following day, as
19 he told me he made a new connection for pure goods in which
20 he would pay approximately \$50,000 a kilo. He had said that
21 the fellow, this fellow, Tony, that he had spoken to before,
22 had told him that if he were to bring enough money for
23 at least two kilos he would give him a third on consignment.
24 I told him, "Well, this is the first I have heard of this
25 deal. Why haven't I heard of it before?"

1
2 He said, "Well, I had spoken to this fellow with
3 Ernie about it before and with Frankie Caravella."

4 I said, "How did it come about?"

5 He said, "Frankie and I went out to Long Island and we
6 spoke to Ernie's brother, Patty Pontiac, who introduced
7 us to this fellow Tony."

8 He says, "By the way, this fellow Tony does not want
9 to meet anybody else regardless of whether he is a partner
10 or anything else; he just doesn't want to meet anybody;
11 he will just speak with me," indicating himself, Verzino.
12 He told me that he had an appointment with this fellow
13 Tony for the following day. He then told me that he had
14 spoken to Ray Robin, one of our customers, and worked out
15 a deal with him so that Ray Robin would come up with some
16 money that we could use as front money to buy these pure
17 goods from Tony. He told me to meet him the following
18 day in front of Ray Robin's office and that from there we
19 were to go out to Long Island, myself, he and Frankie
20 Caravella.

21 Q Continue.

22 A He then asked me how many people owed us money out
23 of the business, that did I have a list with me. I told
24 him, yes, I did.

25 He says, "Well, let me see your list."

1
2 I took the list out of my pocket. He told me,
3 "Well, write down these few notations here of people
4 who owe me money belonging to the business."

5 I then made a list of the customers I was handling
6 and a list of the customers that he was handling. He then
7 asked me for a copy of the list so he can make notations
8 on his paper, too, which I gave him, and then he returned
9 it to me.

10 Q Was anything said with regard to the source of
11 these pure goods?

12 A Only insofar that he said he thought he was
13 closer to the source than Tony West had used. He felt that
14 he was closer to the original source of the goods, and that
15 through this other Tony from Long island he would get
16 a lot closer to the original source of the goods.

17 Q What kind of lists were these?

18 A These were lists with names of customers and
19 amounts of money that were due us and money that we owed
20 out to other people.

21 MR. AMOROSA: May I digress for one moment here?

22 THE COURT: Sure.

23 Q Did you know who Verzino was talking about when
24 he referred to Ernie's brother, Patty Pontiac?

25 A Yes, sir.

mpbr

Perna-direct

828

Q Had you ever met Patty Pontiac prior to that time?

A Yes, sir.

Q Had you ever met him in the Golden Gate Restaurant?

A Yes.

Q When?

A It was some time after I had come back from Florida.

THE COURT: Give us a date.

THE WITNESS: I don't recall a date, your Honor.

Q Approximately?

THE COURT: How many times did you meet him?
I don't know whether you were referring to once or five times?

THE WITNESS: Once. I don't remember whether it was in December or November.

THE COURT: All right, that is close enough, I am sure.

Q Who was present when you met Patty Pontiac in the Golden Gate Restaurant?

A Ernie Malizia, Tony Verzino, and Frankie Caravella.

Q Do you know Patty Pontiac's real name? His first name?

A I believe it is Joe. I am not certain.

mpbr

Perna-direct

829

Q His last name is, of course, Malizia?

A Yes, sir.

Q What was said in connection with narcotics at that time?

A Patsy Pontiac had said to myself and Ernie, he says, "You look like you're doing pretty good. You're making a lot of money."

Ernie then told his brother, he said, "You could become a partner and make a lot of money yourself if you want to come out of the woods and go out and get us some pure goods."

Q Do you recall anything else being said by Patsy Pontiac?

A Not at that particular time, no.

Q Let's go back to the conversation now that you were having with Verzino in late January at the Jackson Steak House. You mentioned a person by the name of Frank Caravella. Who is Frank Caravella?

A He had been a customer of Verzino's.

Q What is his nickname?

A Skinny Frankie.

Q After you exchanged lists with Mr. Verzino, was that the end of that meeting?

A Yes, sir.

1 mpbr

Perna-direct

830

2 Q Let me direct your attention to the next day and
3 ask you where you went.

4 A I went to Ray Robin's office in downtown
5 Manhattan.

6 Q Downtown Manhattan? Where?

7 A Near the Tombs.

8 Q Whom did you meet, Mr. Perna?

9 A I met with Anthony Verzino and Frankie
10 Caravella.

11 Q Did you have a conversation?

12 A Yes. Verzino had told me that Ray Robins had
13 given him the money that he expected to get from Ray
14 Robin, so that we would be able to put up the money for
15 the pure goods that he expected to get that day. He then
16 said, "Let Frankie drive your car, you sit in the car with
17 Frankie, as he knows the way to get out to Long Island.
18 I don't know the location. I will follow you in my car."

19 We got in the cars and left.

20 Q Where did you go?

21 A We started to drive out to Long Island, and
22 I don't recall what highway we took or anything, but
23 I remember during that time Verzino pulled up alongside of us
24 and indicated to us that he wanted us to follow him.
25 We did so. He got off at the next exit. He went to

mpbr

Perna-direct

831

1 a motel. He pulled up in the parking area of the motel.
2 He went in and rented a room. We parked the car right
3 behind his. When he came out I said, "Well, what are
4 you doing here?"
5

6 He says, "I rented a room so we can count
7 out the money, put it together in one suitcase, and I will
8 have it ready for Tony when I get to him."
9

10 We went up to the room that he rented, did as
11 he said, counted up the money, put it in the one suitcase.
12 We left the room, went down to car. He put the suitcase
13 in the trunk of his car. At that time I told Verzino
14 that it was foolish for me to continue to go any further,
15 as this person, Tony, that he was going to meet, did not want
16 to meet anyone else, and I would only be wasting the day
17 going any further out to the Island, and that I wanted to
18 go back to the Bronx, as I had some other commitments,
19 some other appointments. He argued with me and insisted
20 that I go with him. I insisted that I was not going to
21 go, which I didn't. he told me, "Okay, I will meet you
22 7:30 tonight in the Astor Bar in the Bronx."

23 Q How much money was counted out in your presence
24 in the motel room to be paid to this fellow Tony?

25 A \$75,000.

Q Cash?

1 mpbr

Perna-direct

832

2 A Yes, sir.

3 Q What did you do after the conversation you just
4 described?

5 A I returned to the Bronx.

6 Q You didn't meet with anybody that day, did you?

7 A No, sir, not that I recall.

8 Q Did there come a time that same day when you saw
9 Anthony Verzino again?

10 A Yes, sir.

11 Q Where?

12 A At the Astor Bar in the Bronx.

13 Q What time?

14 A 9:30.

15 Q Whom was he with?

16 A Skinny Frankie.

17 Q You had a conversation?

18 A Yes, sir.

19 Q What did Verzino say or Frankie say?

20 A Well, I asked Verzino what happened, why he was
21 so late, and why hadn't he called me. He told me that he had
22 a problem, that this fellow Tony that he had met originally
23 was supposed to get the goods delivered to him in lower
24 Manhattan, and they had waited there some time. The people
25 didn't show.

mpbr

Perna-direct

833

1
2 This Tony made a phone call and then he informed Tony
3 Verzino that they had to go out to Queens. Verzino told
4 me they did. They went to Queens, went to a restaurant
5 in Queens, and somewhere there they picked the goods,
6 exactly how, I don't recall. From there he went back to
7 lower Manhattan to pick up Skinny Frankie, whom he had
8 left at a bar. He picked up Frankie, and then proceeded
9 to go to the Astor Bar in the Bronx.

10 Q Is that the same Frankie Caravella named in
11 the indictment?

12 A Yes, sir.

13 Q After that conversation what did you and Verzino
14 do?

15 A Verzino and I went to an establishment or a
16 place that he had. WE had moved at that time to Westervelt
17 Avenue.

18 Q What happened to Caravella?

19 A Caravella got in his car and left.
20
21
22
23
24
25

ke 5 p.m.

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mdlt 1

Perna-direct

2

Q What happened when you got to the stash?

3

A Verzino opened the bag that he had brought the goods in, laid it out on the table, and asked me to look at it, and didn't it resemble the same goods we had gotten from Tony West.

7

I told him it look the same as far as color and texture, but I'm not an expert at it, I couldn't tell you if it really was.

8

9

10

He then said to me "Well, let's test it and see how it reads," which we proceeded to do.

11

12

Q What do you mean, test it?

13

A Test it with a centigrade thermometer.

14

Q To determine what?

15

A The -- to determine the purity of the goods.

16

Q What was the result of the test?

17

A The goods was pure.

18

Q How much pure goods did you have there, Mr.

19

Perna?

20

A Three kilos.

21

Q How many pounds in a kilo, Mr. Perna?

22

A Two pounds and two or three ounces.

23

Q What were packaged in, these three kilos?

24

A Clear, plastic bags.

25

Q How many bags?

A It would be six bags.

1 mdt 2

Perna-direct

2 Q You saw the bags you had got from Tony West,
3 didn't you?

4 A Yes, sir.

5 Q And you saw these bags?

6 A Yes, sir.

7 Q Were they identical?

8 A Yes, sir.

9 Q Was the purity reading identical?

10 A Yes, sir.

11 MR. EPSTEIN: Objection. There is no testimony
12 a purity reading was ever done before.

13 THE COURT: Objection sustained.

14 Q Was a purity reading ever done on the Tony
15 West goods?

16 A Yes.

17 Q In the 'same manner?

18 A Yes, sir.

19 Q In your presence?

20 A Yes, sir.

21 Q The same instruments were used with respect
22 to the goods from Tony?

23 A Yes, sir.

24 Q And the purity was identical?

25 A Yes, sir.

mdlt 3

Perna-direct

1 THE COURT: Ladies and gentlemen of the jury,
2 I try to be mindful that the tension under which you labor
3 in order to understand what's going on, and you all show it.
4 I am watching you. You care about what you're here for.
5 It is a strain. I try to make these recesses primarily to
6 give you a certain amount of relief. If I am not doing it
7 often enough, and anyone feels he or she would like to have
8 a recess, don't hesitate to raise your hand and I will
9 call a recess.
10

11 How much more of this witness have you on
12 direct, Mr. Amorosa?

13 MR. AMOROSA: I think perhaps, your Honor, we can
14 conclude the direct certainly today.

15 THE COURT: Very good. Would the jury care
16 for a few minutes recess, or shall we go on?

17 MR. AMOROSA: Even assuming a short recess.

18 THE COURT: Would the jury care for that? Would
19 you like to go on?

20 How many would like to have a recess right now?

21 (Three hands.)

22 THE COURT: All right. That's enough.

23 A short recess. Now, what does that mean? Don't
24 start getting up until I'm through. That goes for every
25 time. You see, that's what you call ancient behavior. It

1 Adlt 8

Verzino-direct

2 right here under oath, and it is a different proposition
3 from talking outside. Outside you can say anything. Here
4 you can only answer the question that is put to you.

5 I don't want you to suddenly say something that
6 does not belong and is not an answer to a question and I've
7 got to start all over again with this trial and dismiss the
8 jury. Do you understand?

9 THE WITNESS: Yes.

10 THE COURT: That's the reason I am talking to
11 you and telling you that you must only answer the question that
12 is asked of you.

13 Do I make myself clear?

14 THE WITNESS: Yes, sir.

15 THE COURT: Speak up at all times.

16 All right.

17 MR. AMOROSA: May I proceed, your Honor?

18 THE COURT: Please.

19 DIRECT EXAMINATION

20 BY MR. AMOROSA:

21 Q Where do you reside, Mr. Verzino?

22 A In jail.

23 Q How long have you been in jail?

24 A About twenty months.

25 Q Since when?

1

2

A February 25, 1974.

3

Q Would you keep your voice up, sir?

4

Why were you taken to jail on February 25, 1974?

5

A I was arrested with narcotics.

6

THE COURT: Thank you for raising your voice.

7

Keep it up that way.

8

Q How much narcotics did you possess at the time

9

of arrest on February 25, 1974?

10

A Approximately 26 pounds.

11

Q What type of narcotics?

12

A Heroin.

13

Q Have you pleaded guilty in connection with that

14

possession?

15

A Yes, I have.

16

Q Where have you pleaded guilty?

17

A State Court, State Narcotics Court.

18

Q Have you been charged by the authorities with

19

more than just possession?

20

A Yes, I was charged with sales.

21

Q When did the sales occur?

22

A In a period of time in 1973.

23

Q Have you pleaded guilty with respect to those

24

sales, also?

25

A Yes.

1 milt 10

Verzino-direct

2 Q What penalties do you face under your pleas of
3 guilty, Mr. Verzino?

4 A Under sales I face from one to eight and a
5 third to life, and another count of conspiracy, fifteen
6 years.

7 THE COURT: Keep your voice up, please.

8 Q When did you begin to cooperate with the
9 government in connection with this case, Mr. Verzino?

10 A Some time in August, 197 --

11 Q Keep your voice up.

12 A .. Some time in August, 1974.

13 Q Where were you on August 1, 1973?

14 A In Atlanta Penitentiary.

15 Q What were you doing in Atlanta Penitentiary?

16 A I was serving twelve years. A twelve-year
17 sentence.

18 Q For what?

19 A Violation of federal narcotics statute.

20 Q Atlanta Penitentiary is a federal prison
21 institution?

22 A Yes.

23 Q Who meted out that sentence, which Court?

24 A Judge Weinfeld, in the federal court.

25 Q In this District?

A Yes.

1 mdt 11

Verzino-direct

2 Q How long have you been selling heroin for profit?

3 A Since 1959.

4 Q In what amounts?

5 A Large amounts. Multi-kilos.

6 Q I'm sorry, I didn't hear you.

7 A Large amounts. Multi-kilos.

8 THE COURT: Look, I spoke to you very frankly.

9 If you are not going to do it, I am going to adjourn the
10 case and put it on at night time, and maybe you can talk
11 clearer at night time than you can during the day. I'll try
12 out anything. I'll make you stand up and testify in order to
13 be able to get what you have to say. Do you understand that?
14 I can even get an answer from a high school boy if I asked
15 him to speak up. I don't have to plead with him.

16 Now, stop it. Open up your mouth. Did you
17 hear me?

18 THE WITNESS: Yes.

19 THE COURT: That's what you are to do.

20 Go on.

21 Q Did there come a time --

22 MR. J. PANZER: Excuse me, your Honor, can I
23 get the answer as to when, from what time on he was selling
24 heroin?

25 THE COURT: Would you please read it, Mr. Deutsch?

(Record read.)

Q Did there come a time you were released from Atlanta Penitentiary?

A Yes, there did.

Q When was that?

A August 24, 1973.

Q Subsequent to your release from Atlanta Penitentiary, did you meet with Mario Perna and Ernest Malizia?

A Yes, I did.

Q How long have you known these men?

A A good many years. Many years.

Q Where did you meet with these men?

A In front of an apartment building I lived in in Brooklyn.

Q Where, specifically, if you can recall?

A At 115 Brighton 15th Street.

Q When was this meeting?

A In the morning .

Q Who else was present at this meeting besides yourself, Perna and Malizia?

A Just us.

Q Did you have a conversation with these men at that time?

mdlt 13

Verzino-direct

1946

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A Yes, I did.

Q Do you recall the exact words of that conversation?

A No.

Q Do you recall the substance of that conversation?

A Yes, I do.

MR. GOLDBERG: Your Honor, could we have a time on or about that morning? A month, a week?

THE COURT: Certainly.

Q Mr. Verzino, how long after you got out of Atlanta Penitentiary did you have this conversation with these men, approximately?

A A week or ten days.

THE COURT: So that would be about what time? Give us the time. The month, if you don't know the day.

THE WITNESS: Late August or early September.

THE COURT: Of the year --

THE WITNESS: 1973.

Q What was the conversation you had in substance with these men, and if you can recall, tell us who said what. If you cannot recall, tell us that you cannot recall.

A I recall in substance Mr. Malizia and Mr. Perna and I, we were talking about -- I asked -- Mr. Perna asked me

1 alt 14
2 if I had anything against him, or any grudge, and I said I
3 didn't know yet, depending on his answers to me with certain
4 questions in relation to a prior business dealing we had
5 whether or not I had a grudge.

6 Mr. Malizia then asked me if I thought I should
7 have a grudge against Mr. Perna. I said "I don't know," I
8 hadn't heard from him after I left Atlanta, and I thought
9 that perhaps he had swindled me out of something I thought
10 was due me.

11 Mr. Perna explained to me that he did not, that
12 a man he was supposed to get in touch with in order to fur-
13 ther what we had been doing never got in touch with him and
14 had avoided him, and his answers had satisfied me and we
15 stopped talking about that.

16 Mr. Malizia asked me what I intended doing...
17 I said I didn't know yet, but that I needed some money.. He
18 told me that he could let me have \$3,000 that they had in the
19 car, and Mr. Perna took the \$3,000 from the glove compartment
20 and gave it to me. He then told me that -- Mr. Malizia
21 told me they had gone into partners, him and Perna, since
22 about May, before I came home, and that they were selling
23 heroin and they had some customers just getting going good,
24 as he said.

25 So he asked if I thought I wanted to come along

mdlt 15

Verzino-direct

with them. I said I didn't know, I'd let them know, I wanted to talk to certain people, including the party we had discussed, if possible.

Q Did you mention his name?

A Yes, I did.

Q What was his name?

A Tony Stassi.

Q Would you continue, please?

A And he told me that they had a hard time getting out to where I lived, they were unfamiliar with the area, and I said that when I got a chance I would move to the Bronx.

Mario told me that they were doing business with some old friends of mine, and then Ernie said that they had gotten some stuff, narcotics, from them, but that there was a lot of credit or money owed, but with what they had and what they had already saved, they had about \$180,000 and if I wanted to I could come in with them.

I said I would think about it, and I asked where I could find the man they mentioned or the men they mentioned.

Q Who did they mention?

A They mentioned Bolot, and said they were doing business with Bolot and his friends, Joe the Grind, and them up in Yonkers. I asked where could I find them. I asked if

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Verzino-direct

question. It is leading and suggestive. And even though I did not allow him to finish, you can see from the beginning of that question it leads into an area that is improper.

THE COURT: I don't see how I can tell that.

Let's hear from Mr. Amorosa.

MR. AMOROSA: I will rephrase the question.

Q When did you go to the Atlanta Federal Penitentiary?

A 1966-67.

Q From 1959 to 1966 or 1967 did you sell narcotics?

A Yes.

Q What was the frequency of these sales of narcotics?

A Frequently

THE COURT: Wait a minute. While I talk everybody remain quiet, whether you like it not.

Mr. Amorosa, I would suggest that that calls for the operation of his mind. You can put the question another way.

MR. AMOROSA: Let me try to ask it this way.

Q How many times did you buy or sell heroin from 1950 until 1966 approximately and roughly?

A Many times.

THE COURT: The question really is, were you in the racket daily during that period of time? Yes or no?

mdit 7

Verzino-direct

partnership with any other defendant that you have mentioned?

A I had dealings with another defendant.

Q Who was that?

A Mr. DeLutro.

Q I'll come back to that later. Subsequent to this conversation that you had with Mr. Pallatta up by the Moon Pick Social Club, did you speak again with Perna and Malizia?

A Yes, I did.

Q When, with relationship to the last conversation with Pallatta?

A Shortly thereafter, a day or so.

Q Where?

A At a restaurant in a hotel near the building I lived in.

Q Do you recall the name of the restaurant?

A No. I know the name of the hotel.

Q What was the name of the hotel?

A The Coney Island Hotel.

Q What was said in that conversation, in substance, Mr. Verzino?

A Mr. Malizia asked me if I had made up my mind yet what I was going to do, and I said "Yes, I thought I would like to go partners with them," and he asked Perna,

mdlt 8 Verzino-direct

Mario, he asked him if it was all right with him, and Mario answered "yes," and he said to forget about what happened, we would straighten it out as time went on.

Q Who said that, if you can recall?

A Malizia. He said -- he asked me what did I think would happen in relation to the prior business dealings I had with Perna in Atlanta. I said I didn't know, but it seemed as though Perna was telling me the truth when he said the other man hadn't gotten in touch with him.

Q Did he mention this other man's name?

A Yes.

Q What name did he mention?

A Stassi. Tony Stassi. And I said that Mr. Stassi's brother, who was in Atlanta with me, had given me -- told me that his brother would be in touch with me and that when he did we would be able to more or less piece out the truth of what had happened.

Q Who was this Stassi who was in Atlanta with you?

A Joseph Stassi.

Q How old is Joseph Stassi, approximately?

A Now?

Q Yes.

A 67.

1 MD 3-6

2 cut you off because I want you to have plenty of time.

3 MR. GOLDBERG: You didn't cut me off. Thank
4 you.

5 THE COURT: You will have plenty of time to
6 develop whatever you have in your heads.

7 MR. AMOROSA: We are offering this not under
8 some cockeyed theory, as Mr. Goldberg claims --

9 MR. CHANCE: He said cockamamie.

10 MR. AMOROSA: -- but under some other theory,
11 and we will produce the authorities for your Honor.

12 THE COURT: Thank you.

13 MR. BLOSSNER: Judge, you asked me to remind you
14 quite some time ago when we approached the situation.
15 It seems to me we are now coming to the end of the line with
16 Mr. Verzino and he is about probably to identify or attempt
17 to identify my client, Mr. Soldano, in the courtroom.

18 I had asked you to reconsider the fact that
19 this courtroom identification may be based on an improper
20 and if so tainted photographic identification. I would ask
21 you to inquire about this before that identification comes
22 about.

23 MR. AMOROSA: Our position is identical to the
24 position we took prior to trial. There was no impermissible
25 suggestive photographs which were shown to this man.

1 MD 8-7

2 THE COURT: Have we ruled on it?

3 MR. AMOROSA: You have ruled on it. Our
4 position is testimony will establish beyond doubt he has the
5 ability to identify this man.

6 THE COURT: All right.

7 MR. BLOSSNER: If your Honor please, there was
8 never a hearing on it. I am completely in the dark as to
9 who has shown him a photograph, in what manner a photograph
10 was shown him, among how many, and whether it was pointed out,
11 or what happened, or was it so suggestive. May I inquire
12 on that?

13 MR. AMOROSA: You can ask him on cross
14 examination all you want.

15 MR. GOLDBERG: Shouldn't that be decided at a
16 hearing?

17 THE COURT: I have already said on the basis of
18 what was before me I have made a ruling and he is not
19 entitled to a hearing. If there is something advanced before
20 me that makes me change my mind, I will change it. In the
21 meantime, you will be given an opportunity, you will not go
22 into his client's testimony until we have had a chance to
23 pick up this point that he has raised.

24 All right?

25 MR. AMOROSA: Yes, sir.

1 MD 3-8

2 THE COURT: So you will have your chance to
3 advance it again, counsel.

4 MR. BLOSSNER: Thank you.

5 MR. AMOROSA: One more thing briefly on the
6 record. While questioning Varzino I noticed Mr. Pallatta
7 and Mr. DeLutro had various expressions on their faces
8 with respect to some of the testimony being elicited.
9 I simply want to state for the record I would like an order
10 directing these people not to make such expressions, and
11 if they want to express themselves they should express
12 themselves on the witness stand.

13 THE COURT: I don't want to make an order because
14 of my respect for counsel. Talk to your clients and tell them
15 on the basis of the Judge's own experience that kind of
16 thing invariably hurts them before the jury. They are
17 wrong from their own point of view, from their own
18 interests, if they do that.

19 MR. J. PANZER: If I saw it I would have told
20 them.

21 THE COURT: You watch it.

22 MS. OBERMAN: When do you want memos?

23 THE COURT: I think you will have to do it very
24 fast.

25 MR. AMOROSA: I don't expect Mr. Manfridonia

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Verzino-direct

2009

2 approximately January of 1974. I ask you whether you were
3 meeting with Mr. Ballatta as you were regularly scheduled to
4 during that period?

5 A No, I wasn't.

6 Q Why not?

7 A Well, I was trying to delay paying the monies
8 because we had not only legal expenses, but everyone was a
9 bit slow, and we were taking in monies and covering other
10 expenses.

11 Also, there was some surveillance that Perna
12 and I had seen three or four times, or we assumed that they
13 were being surveilled, or we suspected it, and we didn't go
14 as frequently or as punctually as we were supposed to go up
15 there.

16 Q Did there come a time, Mr. Verzino, when you
17 secured additional pure goods, you and Perna?

18 A Yes.

19 Q Would you relate the events leading up to that?

20 A Some time in the fall or early winter Mr.

21 Malizia --

22 Q Of what year?

23 A 1973.

24 Mr. Malizia, Ernie, had a meeting with his
25 brother, Patty, Patty Malizia, Patsy. It was I, Mr. Caravella,

1
2 Mr. Perna, and a Mr. Culhane was there for a certain amount
3 of the time, but he wasn't privy to the conversation.
4

5 Q Before you tell us -- before I ask you to tell
6 us the conversation, do you remember where this meeting was?

7 A Yes, I do.

8 Q Where was it?

9 A The Golden Gate Restaurant, a Chinese restaurant.

10 Q Where is that?

11 A 236th Street and Johnson Avenue.

12 Q In the Bronx?

13 A Yes.

14 Q Would you relate in substance the conversation?

15 A Ernie and Patsy began talking. Ernie asked
16 Patty how a bookmaking business that a third brother had was
17 doing which they all shared in the profits, the three of them,
18 and Patty said that they hadn't done too well that week or
19 the last two weeks, and that Ernie then said to him, "Well,
20 you can have my end of it." Just take something out to give
21 to his family, but that he could keep the majority of Ernie's
22 portion.

23 Patty asked Ernie, "You're moving pretty good?"

24 Ernie said, "We're moving."

25 Patty asked him, can he get moving, too.

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2 Ernie said it would be rough because he had
3 already taken me as a partner and that Patty had refused
4 prior. But he said, "If you can get goods, we'll take
5 goods. Why don't you" -- he asked him, to see some party
6 in Queens whom he referred to as Frankie, but --

7 Q Who did he refer to this party as?

8 A Frankie.

9 Q Frankie?

10 A Frankie, yeah.

11 Q All right.

12 A And I don't know exactly who he was talking
13 about.

14 Q Just tell us what was said.

15 A He said, "Okay."

16 Ernie said that he heard that this party,
17 whoever he was, might be getting some goods in, and that he
18 felt that because of a prior association with him that he
19 could get some goods partly even on credit.

20 So Patty agreed, and then Patty said that
21 he would see someone else he knew from downtown, as he said,
22 downtown, and he said, "Well, how would I get in touch with
23 you?"

24 He wanted to know -- Ernie told him to get in
25 touch with Frankie or I.

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Verzino-direct

2012

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2 I said "You best not use my number, we may
3 be a little hot."

4 So he said hewould get in touch with Frank
5 Caravella and Frank in turn would get in touch with us,
6 because Frank was seeing him on a fairly regular basis.

7 Q Do you know Patsy Malizia's real name?

8 A I always thought it was Patsy Malizia.
9 Patty Pontiac.

10 Q Was he a fugitive, also, at that time?

11 A Yes.

12 Q Subsequent to this meeting you have just
13 described, did you have a conversation with Frank Caravella
14 with respect to what was discussed?

15 A Yes, I did.

16 Q When was that conversation with Caravella?

17 A Some time in January, late January.

18 THE COURT: Will you hold it? Up to now you
19 have been saying "Frank." Who were you referring to when
20 you said "Frank" many times this morning?

21 THE WITNESS: Various persons. Frank Lucas,
22 Frank Caravella --

23 THE COURT: That's the trouble.

24 MR. AMOROSA: Judge, I believe, though, what the
25 witness says is true, but I believe in the context it was

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Verzino-direct

2013

2 developed which Frank he was talking about.

3 THE COURT: Please, when a Judge feels that these
4 things should be more exact, why don't you try to do it? Why
5 not do it? If you sold goods in a store you would please the
6 customers. "Do you want this article in a different kind of
7 bag? Okay, give it to him."

8 And the Judge keeps saying, please use the
9 surname. This proves it overwhelmingly. How can a reader of
10 the record, a stranger to this trial, know who he is talking
11 about? Will you tell me?

12 As a matter of fact, you are supposed to, at
13 the beginning of every day, re-introduce all the characters.
14 That's the way it is done. Please get that straightened out.

15 Who has he been talking about up to this
16 minute?

17 Q You said a meeting ---

18 MR. BLOSSNER: I also strenuously object to what
19 Mr. Amorosa personally thinks of this witness' testimony.

20 THE COURT: I disagree with you on that one.

21 Go ahead, Mr. Amorosa. Straighten it out, will
22 you please?

23 Q You began your testimony, I believe, this morning
24 with respect to a meeting you had at the Cross County
25 Shopping Center and there was a person by the name of Frank at

mdlt

Verzino-direct

2014

that meeting, wasn't there?

A Yes.

Q Who was that Frank?

A Frank Pallatta.

Q Subsequent to that, I believe in your testimony--

THE COURT: I give you my word, I thought it
was Lucas.

MR. AMOROSA: I'm sorry, your Honor.

Q Subsequent to that you testified that you had a
meeting at the Van Cortlandt Motel between yourself, Perna
and a man named Frank.

Who was that Frank that you were talking about?

A Frank Lucas.

Q All right.

Subsequent to that in your testimony you
testified that you had a meeting involving yourself, Ernie
Malizia, Patsy Malizia, Frank Caravella, James Culhane for a
time, I believe.

Now, that was Frank Caravella at that meeting?

A Yes.

Q And while Patsy Pontiac or Patsy Malizia was
talking, he mentioned another Frank, is that right?

A Yes.

Q Do you know who he meant when he mentioned that

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Verzino-direct

2015

other Frank?

A No, I don't.

Q You didn't know that other man's last name?

A No.

Q Frank's last name, that is?

A No.

Q All right.

THE COURT: I think what's happened in the last minute establishes exactly what my complaint is on that score. Hereafter, Mr. Witness, and Mr. Questioner, and that goes for all questioners, we will cut out this business of using the first names unless you also combine it with the last name each and every time.

All right, go ahead.

Q Subsequent to the meeting at the Golden Gate Restaurant in the fall or winter of 1973, did you speak with Frank Caravella with respect to what was discussed at that meeting?

A Yes, I did.

Q When was the conversation with Frank Caravella, to the best of your recollection?

A In late January.

Q Of what year?

A 1975 -- '74.

1 mdlt
2 Q And where was the conversation with Caravella?

3 A In my house or in a bar called the Rosedale.

4 He came to my house, but I don't recall where the conversation
5 took place.

6 Q Tell us in substance what was said.

7 A He said to me that --

8 THE COURT: Who is "he"?

9 THE WITNESS: Frank Caravella.

10 A (Continuing) Caravella said to me that we have to
11 go out to Long Island to see that guy.

12 I says, "Who?"

13 He says, "Patty, Patty Malizia, Pontiac."

14 So I said, "What's up?"

15 He said they called him. He said, "Don't you
16 remember what we had talked about in the bar?"

17 I said, "Yeah, I generally recall."

18 He said, "Well, he said that he had gotten in
19 touch with someone and he wants to see us."

20 I said, "When do we have to see him?"

21 He said that he had made an appointment for
22 2 o'clock the next afternoon in Port Washington, Long Island,
23 in some place in Port Washington called Jimmy's, Jimmy's
24 backyard, a bar.

So I said, "Okay," and we made an appointment

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Verzino- direct

2017

for the next day to meet.

Q Let me direct your attention to the next day and ask you whether you met Caravella.

A Yes, I did.

Q Did you go anywhere with Frank Caravella?

A Yes, I did.

Q Where did you go?

A To Jimmy's Backyard, a bar in Port Washington.

THE COURT: Jimmy who?

THE WITNESS: I don't know. The name of the bar is Jimmy's Backyard.

THE COURT: All right. You have answered it. You have answered it. Jimmy's last name unknown to me.

Go ahead.

Q Mr. Verzino, what was the name of the bar?

A Jimmy's Backyard.

Q How did you get to Jimmy's Backyard?

A By automobile.

Q Would you tell us in your own words what happened when you arrived there?

A Caravella and I met Mr. Malizia in the bar, in Jimmy's Backyard, at the bar.

Q Which Malizia?

A Patsy Malizia.

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Q What was said?

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A Patsy said that he was waiting for a man whom he wanted to speak to and he wanted me to speak to concerning obtaining some merchandise, and he suggested that because it would be the first meeting and he wanted to keep some privacy that Frank Caravella go to another place that he described somewhere down the block, a restaurant, a restaurant and bar, and Frank said that he would go there and have something to eat and come back about 3:30 or so.

11

Q Frank who?

12

A Caravella.

13

And Caravella left. While --

14

Q Did you -- I'm sorry.

15

16

17

18

A A while after Caravella left, another man came along, and he came into the bar and Mr. Malizia introduced me to him as Tony. And I as Tony, also. And we began to talk.

19

20

Q Would you -- before you began the talk, would you describe this man?

21

22

23

24

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A He was a man of medium height, stocky, a medium stocky build, with a large head, well dressed, and very solid walk, fair complected, dark hair of what I could see of his hair. At the time he had a hat on. And well kept hands.

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Verzino-direct

2019

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2 Q Would you now describe Jimmy's Backyard?

3 A Yes.

4 It is a bar and restaurant. You enter through
5 a vestibule and the bar -- you come into the barroom first,
6 it's sort of towards your left, and there are some tables
7 at the perimeter of the barroom, and directly to the rear at
8 the right of the -- at the right edge of the bar, is another
9 dining room and what's beyond that, I don't know. I didn't
10 see beyond that.

11 Q Did you have a conversation with Patsy Malizia
12 and this fellow Tony at that time?

13 A Yes, I did.

14 Q Where was the conversation in the bar?

15 A Partially at the bar and partially at the table.

16 Q Would you relate the substance of that conversa-
17 tion?

18 A Patsy asked him, he said to him -- Patty
19 Malizia, that is, -- said to this man Tony, "How did you make
20 out? Can you get anything?"

21 He said that he could. And Patty then began to
22 ask him what the figure would be, and this man Tony indicated
23 to Patty, he told Patty that the figure would be \$50,000.

24 Patty then told me, asked me, he said, "How
25 much money have you got?"

1 mdlt
2 I said, "I don't know yet. It's dependent.
3 I'm not sure."

4 The man Tony asked me how many did I want.
5 I said that I wasn't sure yet what I could pay for.

6 Patty interrupted and said can he give us any
7 credit. He said that he wasn't sure, but that there might
8 be a possibility depending on how many we wanted and how much
9 money we brought to pay for partially what we wanted and
10 asked me again how much money I had.

11 I said that I couldn't be sure, I could be
12 positive of 70 to 100 thousand -- 70, 75 at least I was sure
13 that I could raise within the next day or so, but that I
14 couldn't be sure of any amount over that. But I said that
15 it didn't matter, I didn't really want credit, it wasn't
16 necessary. That if he could give me whatever I paid for in
17 cash to the equivalent amount according to the price, and he
18 said, "But how much money do you think you can bring?"

19 I said, "Well, I know I can bring 75,000, but
20 what I think I'm not sure." And I said, I would have to
21 find out today and tonight what I could bring.

22 So then Patsy Malizia began to talk to this man
23 Tony to try to urge on him to give us some credit. I don't
24 recall the exact words used. At that point we went to a
25 table and Patsy began to order something to eat, and we made

1
2 an appointment for the next day at the same place we were
3 in then, Jimmy's Backyard, for about 2 o'clock.

4 Q Who made the appointment?

5 A It was reached concurrently. I don't recall.
6 Patsy may have made it or I might have made it.

7 Q Who was supposed to see whom?

8 A I was supposed to see Patsy and this man Tony
9 the next day.

10 Q Is that in substance the conversation?

11 A Yes.

12 Q Incidentally, can you describe this man Tony's
13 voice?

14 A It was low. I would say in a low range. But
15 I wouldn't know how to -- it wasn't the lowest voice I have ever
16 heard. It was sort of gravelly. It was not -- we didn't
17 speak in loud tones. It would be difficult for me to say what
18 his voice was in loud tones.

19 Q Would you look around the courtroom and see if he
20 is here.

21 (Pause.)

22 THE COURT: By "he" you mean the man Tony?

23 MR. AMOROSA: Yes.

24 A Yes.

25 Q Would you point him out, please?

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Verzino-direct

2022

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2 A The man seated next to Mr. Magnano, on Mr.
3 Magnano's right.

4 THE COURT: Indicating, counsel?

5 MR. BLOSSNER: Indicating the defendant Soldano.

6 Q Is that the man you saw in Jimmy's Backyard
7 and talked to?

8 A Yes.

9 Q Subsequent to this conversation, what did you
10 do, Mr. Verzino?

11 A Malizia was still eating and I waited for
12 Caravella to come back, and when he did we left Port Washington
13 and went back to New York.

14 Q What did you do that evening?

15 Well -- before I ask you that, did Caravella
16 meet Tony?

17 A No.

18 Q Did there come a time that Tony left?

19 A Yes, he left prior to Mr. Caravella arriving.

20 Q All right. What did you do that evening, Mr.
21 Verzino?

22 A I went to meet Mr. Perna in a restaurant,
23 Jackson's Restaurant, on Fordham Road.

24 Q In the Bronx?

25 A Yes.

1 mdt

2 Q Did you meet with him?

3 A Yes, I did.

4 Q Was anybody else present when you met with him?

5 A Yes, Mr. Caravella, a son of Mr. Malizia's,
6 and a brother-in-law, I believe it is a brother-in-law of
7 Mr. Malizia.

8 Q Ernie Malizia?

9 A Yes. Both Malizias.

10 Q Ernie Malizia's son?

11 A Yes.

12 Q Did you have a conversation?

13 A Yes.

14 Q What was said, in substance?

15 A I told Perna that afternoon's happenings, and I
16 asked him how much money he had, and he gave me -- we
17 compared monies, and he told me that he should have a certain
18 amount of money home, and I told him how much money I thought
19 I had home, and --

20 THE COURT: What did you tell him?

21 THE WITNESS: The amount of money I had.

22 THE COURT: Then you told him something, didn't
23 you?

24 THE WITNESS: I said I have about 30, 33 thousand
25 at home.

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Verzino-direct

2024

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2 THE COURT: Do you see the difference between
3 those two statements?

4 THE WITNESS: Yes.

5 THE COURT: All right, then profit by it.

6 A He said he should have in the neighborhood of
7 40,000 at home, but he had taken some monies out, but that he
8 had 30,000 or better.

9 I told him, "Let's try to get some money
10 tonight. See if you can get some money from some of your
11 people and I'll try to get some money between tonight and
12 tomorrow, and I'll meet you tomorrow morning on Baxter Street
13 about 10 o'clock by the restaurant Felini's."

14 Q What did Perna say?

15 A He said "Yes."

16 He asked if it was necessary.

17 I said, "Yes, I think we should take this shot
18 because it could help us, you know."

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Verzino-direct

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Q Where were you the next day, the morning?

A I was in several places.

Q Did there come a time you met him by Baxter Street?

A Yes.

THE COURT: Met who?

MR. AMOROSA: Perna.

A Yes.

Q Did you meet anyone else there besides Perna?

A Yes, I did.

Q Who did you meet there?

A Frank Caravella and Ray Robin.

Q Ray Robin was one of your customers?

A Yes.

Q What happened?

A They were having coffee, and I went to Canal Street to a bank with Mr. Robin, and he went into the bank and got me some money, \$25,000 He brought it out and he gave it to me. Then we went back to Baxter Street and I met Caravella and Perna again.

Q Were you still selling goods to Ray Robin in this period?

A Yes.

Q In what amounts?

1 mdbl 2 Verzino-direct

2 A Kilos. Three, four.

3 Q Were you selling goods to Culhane in this period,
4 also?

5 A Yes.

6 Q Were you aware in this period that Culhane was
7 cooperating with the government?

8 A No, I was not.

9 Q What did you do after you got back and reached
10 Perna and Caravella after you got the money from Ray Robin?

11 A We started out to go to Long Island, to
12 Port Washington.

13 Q How many cars did you have?

14 A Two.

15 Q What did you do? Tell us in your own words what
16 happened?

17 A Well, we went most of the way towards Port
18 Washington and then we pulled over next to Perna, Perna was
19 in the lead at one point, and I told him we better find a
20 motel so we can put our money together and package it.
21 We went in search of a motel and we found one.

22 Q What happened when you got to the motel?

23 A I rented a room and Caravella, Perna and I went up
24 to the room with the moneys that we had, the various
25 moneys that each of us had.

1 mabr 3 Verzino-direct

2 Q Who rented the room?

3 A I did.

4 Q What did you do after you got to the room?

5 A We counted the money and made it into bundles of
6 a thousand dollars per bundle, and put it into a bag or
7 a box, I don't recall what was used, and then brought it back
8 down to the car.

9 THE COURT: What was the total?

10 THE WITNESS: \$75,000.

11 Q What did you do with the 75,000?

12 A I put it into a package and put it into the trunk
13 of my car.

14 Q I show you Government's Exhibit 84 which has been
15 premarked for identification, and ask you whether you can
16 identify it.

17 THE COURT: Yes or no.

18 A Yes.

19 Q What is it?

20 A It is a hotel -- a motel register card.

21 Q What is it besides that?

22 A It is the card I signed that day to get the room.

23 Q How do you know?

24 A It is my handwriting.

25 Q Under whose name is it signed?

1 mdbl 4

Verzino-direct

2 A Anthony Rossi.

3 Q Did you write that?

4 A Yes.

5 MR. AMOROSA: We offer it.

6 MR. GOLD: I have no objection.

7 THE COURT: Have copies been given to counsel?

8 MR. AMOROSA: Yes, copies have been supplied to
9 all counsel.

10 THE COURT: Very well. Received. Mark it in
11 evidence, Mr. Clerk, please.

12 MR. AMOROSA: I am not certain about the last
13 statement I just made. May I confer for one second?

14 THE COURT: Surely.

15 (Pause.)

16 MR. AMOROSA: I am sorry. I may not have
17 supplied copies of this document to counsel.

18 THE COURT: Then take your time and a look at
19 it, if anyone wants to.

20 (Pause.)

21 (Government's Exhibit 84 was received in
22 evidence.)

23 Q I think we were at the point at which you,
24 Perna and Caravella came out of the room. Is that cor-
25 rect?

xx

1 mdbl 5

2 A Yes.

3 Q Would you tell us in your own words what then
4 happened?

5 A We got into our automobiles and we went to Port
6 Washington.

7 Q Who went to Port Washington, to the best of your
8 recollection?

9 A Caravella and I in one car, Carvella driving,
10 and Mr. Perna in his own car following.

11 Q Where did you go in Port Washington?

12 A I went to Jimmy's Backyard. Caravells and Perna
13 went to a restaurant some distance down the street.

14 Q Was it the same restaurant Caravella had been
15 in the previous day?

16 A Yes.

17 Q According to conversations with Caravella?

18 A Well, according to the restaurant that had been
19 indicated to us, yes.

20 Q What did you do when you got to Jimmy's Backyard?

21 A Mr. Malizia was standing part way in the parking
22 lot.

23 Q Which Malizia?

24 A Pat Malizia, Patsy Pontiac was standing part way
25 in the parking lot and I parked my car next to his car,

1 mdbr 6 Verzino-direct
2 which he said was his car, and I got out to talk to him.
3 As we began talking, this man Tony drove up and parked.

4 Q What kind of a car did he have?

5 A A large Buick, I believe it was, a dark Buick,
6 a dark blue Buick.

7 Q Do you know what year?

8 A It looked new. I'm not too good on --

9 Q All right. What happened after this man drove
10 up?

11 A He got out and he came over and joined the
12 conversation.

13 Q Was there a conversation at that time?

14 A Yes, a short one.

15 Q Was it right in front of Jimmy's Backyard?

16 A Yes, it was.

17 Q What was said?

18 A Patsy Malizia asked me how much money I had
19 brought. And I told him that there was \$75,000 in the trunk
20 of my car. This man Tony then said "Is that all?"

21 I said "Yea."

22 THE COURT: When you say Tony you mean --

23 THE WITNESS: The man I just identified.

24 THE COURT: Then say so. Do you know what his name
25 is now?

1 mabr 7

Verzino-direct

2 THE WITNESS: I do now, yes.

3 THE COURT: What is his name?

4 THE WITNESS: Soldano.

5 THE COURT: All right. Then you say so.

6 THE WITNESS: I didn't know it then, your Honor.

7 THE COURT: I know. That is clear.

8 Q Just say it now, Mr. Verzino.

9 THE COURT: You are not arguing with me, are
10 you?

11 THE WITNESS: No, I am explaining.

12 THE COURT: I could take you on when I was
13 in high school, Mister.

14 THE WITNESS: I am not arguing with you.

15 THE COURT: Don't.

16 THE WITNESS: I am not.

17 Q What else was said? What was said?

18 A I said to Tony, Mr. Soldano, that all I wanted
19 was what I could cover, at that price one and a half kilos.
20 Patty began urging him to see if he could get more.
21 He said, "See what you can do, get what you can get."

22 He said he would see.

23 I then gave him a set of keys to my automobile
24 in a small leather folder.

25 Q Gave who a set of keys?

1 mabr 8 Verzino-direct

2 A Mr. Soldano.

3 Q What was said?

4 A And I explained to him, Mr. Soldano, that my car had
5 a burglar alarm on it, and that in the event he would have
6 to take my car to use it to remember to unlock the driver's
7 door to unset the burglar alarm.

8 He asked me to explain it again, and I said,
9 "Well, it just doesn't matter. I know how to open it.
10 I will leave the burglar alarm off if I leave you the car
11 so you won't have any problem with it.

12 And he said "Okay", and he told me to meet him
13 about 5 o'clock in New York on what I thought was First
14 Avenue near Mulberry Street, or near Canal Street. He
15 said that he would be within a block or so along the
16 avenue, and I would see him.

17 We began to walk, you know, break up the conversa-
18 tion.

19 Q What did you do with the money?

20 A I left the money in the trunk of my car. No,
21 I gave him the money at that point, I believe. I am not
22 sure if I gave him the money there or later.

23 Q What then happened, to the best of your recol-
24 lection?

25 A He said to Patty that he wanted to leave now,

1 mdbl 9

Verzino-direct

2 to have time because of traffic to make the appointment
3 and as e walked away Mr. Caravella and Mr. Perna were walk-
4 ing toward us some distance away, and Mr. Soldano said
5 "Isn't that Teresa's brother, isn't that that girl Teresa's
6 brother", meaning Caravella. And Patty said "Yeah, that's
7 all right, he is with them."

8 And we just left.

9 Q To your knowledge, and from your conversations with
10 Caravella, did he have a sister by the name of Teresa?

11 A Yes.

12 Q What then happened, Mr. Verzina?

13 A Malizia, Patty, I, Perna and Caravella, walked
14 a distance up the street towards the restaurant they had
15 just come from.

16 Q Did there come a time when you went back to
17 New York?

18 A Yes.

19 Q Who did you drive back with?

20 A Caravella.

21 Q Did you have a conversation in the car with
22 Caravella about what he had seen?

23 A Yes.

24 Q What was that conversation?

25 A I said "That fellow, Tony, whatever his name is,

mdbr 10

Verzino-direct

recognized you".

He said "Yea, I recognized him", he said, "it is somefellow that used to go on 106 or 107 a lot that worked downtown in the game."

A I don't know. He said a game. I guess a gambling game. And I asked him, you know, do you know him good? He said that he knew him.

I said, "Well, I recognized you."

Said that, yea, that he seen him take a look at him, and that he did know him at least by face, you know.

Q Had you ever seen Mr. Soldano before you met him the day before that?

A Not to my recollection.

Q What happened to the motel key, Mr. Verzino?

A I left it with Patty Malizia. He said that he would return it, he would use the room to watch TV or possibly meet some girl he knew; because I had the key in my pocket and as we walked away I felt it and said "Geez, I still got the motel key."

He said he knew where the motel was, and he would take it, and I gave it to him.

Q Where were you at about 5 p.m. that same night?

A First Avenue, or Allen Street. It's what I thought was First Avenue near Mulberry.

1 mdbl 11

Verzino-direct

2 Q Downtown New York?

3 A Yes.

4 Q Who were you with?

5 A At that point I was alone.

6 Q Where was Caravella?

7 A He was in a bar on Delancey Street.

8 Q How far from where you were at that time?

9 A Ten blocks maybe. I don't know.

10 Q Had you left him there to go where you went?

11 A Yes.

12 Q What happened at about 5?

13 A I was cruising slowly along this Allen Street, and
14 I saw the man I had met that afternoon, Mr. Soldano, standing
15 off the building line and he gestured to me, and I stopped.

16 Q What did he do when he gestured?

17 A He just raised his hand, sort of a wave, and he
18 stepped out from the curb and he came to my car to the
19 driver's side and I opened the door and slid over and he got
20 in, and he told me that he would have to take the car.

21 I said, "All right."

22 I said, Never mind, I'll leave the keys that are
23 in the car, it is all right, hold the other set in case we
24 ever need them again."

25 I showed him where the registration was, above

mdbr 12

Verzino-direct

1 it -- on one of the blinders, on the back of one of the
2 blinders, and he told me to take his car which was
3 parked a little ways up at the curb, and I said "You won't
4 be long, will you?"

5 He said, "No."

6 He said "Come back in about a half hour or so."

7 And I got out and I took his car.

8 Q What kind of a car was that?

9 A A large Buick

10 Q Is that the same Buick you had seen?

11 A The same Buick I had seen earlier, yes, the
12 day before.

13 Q What is your best recollection of the color of
14 that car?

15 A A dark blue.

16 Q And the year of that car?

17 A New. Within a year or so, maybe two years old.
18 Not new, but new-looking.

19 Q All right. And you say you took his car?

20 A Yes.

21 Q What happened after you took his car and he got
22 in your car?

23 A I went for a drive. I went back to Delancey Street,
24 and I told Caravella that there would be a slight delay,
25

1 mldbr 13

Verzino-direct

2 to stay where he was. I entered the bar for a minute and
3 told him to stay where he was, and that I would be back
4 as quickly as possible.

5 Q Did there come a time you met this man Soldano
6 again?

7 A Yes.

8 Q When was that with relationship to the last time
9 you met him?

10 A Within forty minutes.

11 Q Where did you meet him?

12 A At the same spot I had met him just prior.

13 Q Tell us what happened and what was said, in your
14 own words.

15 A As I pulled along the street he was waiting
16 at the curb. I pulled over, he came and took the wheel
17 of his car. He moved over and he got in and took the wheel
18 of his car and he told me, he said, "We have to go to Long
19 Island."

20 I said, "You mean all the way back there?"

21 He said, "No; no," he meant Queens, not actually
22 Long Island itself. "Queens", he said.

23 Q Where was your car at that time?

24 A I don't know. I don't know. And we drove back to
25 the bridge, the Delancy Street Bridge, and took the Brooklyn-

Queens Expressway to an area in Woodhaven Boulevard. We got off near Woodhaven Boulevard or on Woodhaven Boulevard and went a ways up Woodhaven Boulevard.

Q In what borough?

A In Queens.

Q Who was driving?

A He was.

Q Whose car was it?

A His car.

Q What else happened?

A WE went to a street where, as I recall, in the middle 60s on Woodhaven Boulevard. We were on Woodhaven Boulevard, and he was looking around --

THE COURT: Who is he?

THE WITNESS: Mr. Soldano was looking around.

Q Was anybody else in the car with you?

A No. And he said, Mr. Soldano said that he didn't see my car yet and that there possibly could be a slight delay. I said that I hoped it wouldn't be too long because I had an appointment at 7 o'clock.

He said, Well, I can't help it now."

We then went into a couple of blocks like a circular blocks looking for the car, and we didn't find it. So he stopped on Woodhaven Boulevard and got out

1 mdbl 15 Verzino-direct
2 of his car, walked a ways down -- I didn't see exactly
3 where -- and spent a few minutes and came back, got into the
4 car, and we made a U-turn and began driving towards a hamburger
5 place. He said, "Maybe we will get some coffee,
6 I don't think it will be too long, could order a soda."

7 I said, "Okay."

8 Just as we were entering the hamburger place,
9 I had ordered a Coke, he said "Wait a minute," and he began
10 to walk away. He did walk away in fact some distance
11 and as I came out with the Coke in hand he said "There is your
12 car", and I looked across the street at a slight angle and
13 my car was at the curb.

14 Q What did you do then, Mr. Verzino?

15 A I got rid of the soda and I told Mr. Soldano
16 I will go and pick up my car. "Wait a minute here, I want
17 to check the trunk, and make sure, and I want to check my
18 registration to make sure that possibly whoever took the car
19 might have put the registration in their pocket in case
20 they were stopped or something. I want to make sure it is
21 returned.

22 I asked him about keys. He said the keys were in
23 the car. He said the keys are probably in the car. If
24 not --

25 THE COURT: Who is he?

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Verzino-direct

2040

THE WITNESS: Mr. Soldano.

A He said the keys were probably in the car under the mat. If not, he would wait there a minute or two.

I went to the car. The car was unlocked, the driver's door, and the keys were under the mat. And I then offset the burglar alarm and went into my trunk, and there was a box in the trunk, and I took the box and I put it in the car, got into the car, and looked, checked my registration, then by waving indicated to him that I was leaving and I left.

Q On your way back to New York?

A Yes.

Q Did there come a time you met Mr. Perna after that that same day?

A Yes.

Q Where did you meet him?

A I met him in the Bronx.

Q Where in the Bronx?

A I believe it was at the plant at 2526 -- well, I know it was at the plant at 2526 Westervelt Avenue, but I might have picked him up prior in the bowling alley, I don't recall.

Q Where was Caravella at this time?

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Verzino-direct

2041

2 A While I was en route from Queens?

3 Q No, at the time you met Perna, when you were in
4 the plant with Perna?5 A I had dropped Caravella off at about 96th Street
6 right off the East River Drive.7 Q So when you got back to New York you picked up
8 Caravella?9 A Yes. I picked him up at Delancey Street and then
10 dropped him off near Harlem, somewhere near Harlem.11 Q Then you either picked Perna up at the bowling
12 alley or met him at the plant?13 A I called Perna at a bowling alley and I told him
14 I would be late, and he might have gone directly to the
15 plant. I don't recall. The original appointment was
16 at the bowling alley.

17 Q What did you do at the plant with Perna?

18 A We weighed and tested the narcotics which when
19 we opened the package there was three kilograms.

20 Q Was this the same package that you saw in your trunk?

21 A Yes.

22 Q What was the weight?

23 A Three kilograms.

24 Q What was the purity?

25 A It was high purity. High 80s or early 90s in my

1
2 estimate.

3 Q How did you test it?

4 A With a the ~~mal~~ immersion test. Oil immersion.
5 Thermal test.

6 Q Did you have a conversation with Perna with re-
7 spect to the quality of those goods?

8 A Yes.

9 Q What was said?

10 A Perna asked me if the packages looked like the last
11 ones we had got. I said that "Yes, they did," but
12 it was meaningless because many times packages look exactly
13 similar.

14 Q Were they identical?

15 A I don't recall if they were identical. They were
16 similar in packaging.

17 Q You are referring now to the packages that you got
18 from DeLutro?

19 A Yes.

20 Q Five packages?

21 A Yes.

22 Q How were these packaged? How were the three
23 kilos packaged? How many bags were there?

24 A 6 one-half kilo packages.

25 Q Did there come a time when Perna was arrested?

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Verzino-direct

2043

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A Yes, there did.

3

Q When was that in relation to when you tested

4

these last goods with Perna?

5

A Within a day, I would say. A day or two.

6

Q After Perna's arrest did you speak to Caravella?

7

A Yes, I did.

8

Q Do you recall where?

9

A No, not exactly. No.

10

Q Do you recall when you spoke to him after Perna's

11

arrest?

12

A Yes. The following day.

13

Q What was said?

14

A I said to him that I didn't know what actually

15

it was all about with Perna, that I only knew what I had

16

heard on the radio and read in some article or other in the

17

paper, and that I would find out more but that in the

18

meantime I would need some help. If he wanted to, that

19

I would write off some money that he owed us in exchange

20

for him helping me, and that in fact if he wanted to he

21

could come in on a partnership, that he could be a partner

22

on the profit but not on any principal, or he needn't

23

be a partner on the owings, that when we were paid up he would

24

then become a partner but in the meantime he would share in the

25

profit equally.

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Verzino-direct

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A Yes.

3

Q What was Carvella's relationship to Donnie Boy?

4

A He was -- he said he was Donnie Boy's

5

cousin.

6

Q Did there come a time when you paid the balance

7

of the moneys you owed to Mr. Soldano?

8

A Yes, most of the money.

9

Q How much did you owe?

10

A \$75,000.

11

Q How much additional money was paid?

12

A To my best memory, about \$67,000.

13

Q Was this in February?

14

A Yes.

15

Q You were arrested on February 25, 1974?

16

A Yes.

17

Q How was the money delivered to Soldano?

18

A I sent it with Mr. Carvella to Mr. Malizia, to

19

my knowledge.

20

Q To Mr. Patsy Malizia?

21

A Yes.

22

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Verzino-direct

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Q How many times did you send Caravella out to Malizia with money?

A Three, as I recall.

Q On each occasion he returned, did you speak with him?

A Yes.

Q What did he tell you with respect to what he did with the money?

A He said that he gave Pat the money.

Q Patsy?

A Yes.

Q In the month of February, did you see Pallatta, Skooch, or Donnie Boy, or any other member of that group?

A Yes, I did.

Q When in February did you see those people, or any one of those people?

A Some time in mid February, to my memory, or just prior to my arrest, a week or so prior to my arrest.

Q Who did you see?

A Frank Caravella told me that -- who did I see?

Q Yes.

A Skooch.

Q You saw Skooch?

A Yes.

1 mdlt 18

2 I want you to help me call it the way it should be called.

3 Mr. Blossner feels keenly about his position.
4 His position has clearly been defined on the record. If I
5 have erred, it is there, and that's the way it should be in
6 regard to everything.

7 Well, that's a long way of saying, please don't
8 hesitate to take up anything that bothers you, that worries
9 you. I invite you, I encourage it. I don't think any of you
10 can say that there isn't some tangible evidence from the
11 Judge up to this moment that at least gives you a prima facie
12 evidence of that position by the Court.

13 I am not going to call on counsel, but any time
14 you have any doubt about it you just come right into the
15 robing room and say "I didn't want to put this on the record
16 outside, but I want to tell your Honor," and you can go right
17 to it.

18 Do I make myself clear, counsel?

19 MR. GOLDBERG: Yes, your Honor.

20 MR. AMOROSA: Yes.

21 THE COURT: Get the jury, Mr. Clerk, please:
22
23
24
25

1 mmb 1

Verzino-cross

t4/1 pm

2 (Proceedings continued in open court.)

3 THE COURT: We have whittled this down, ladies
4 and gentlemen, a great deal, and Mr. Panzer just wants
5 another short period of time, much less than he thought, and he
6 will wind up his cross.

7 BY MR. J. PANZER:

8 Q Mr. Verzino, sitting here today, as you sit here
9 now under oath, would you lie from this witness stand if
10 in any way it suited your purpose or your end or was of
11 benefit to you?

12 A No.

13 MR. J. PANZER: No further questions.

14 THE COURT: Any further cross?

15 MR. BLOSSNER: If your Honor please, I am
16 next. Can I have that answer to the message I gave you
17 earlier?

18 THE COURT: If you will just give me a moment,
19 counselor. You are perfectly right. We will deal with it
20 right now.

21 Mr. Blossner has in due time made a motion in
22 which he has summed up in paper handed to the Court at about
23 12:35 this day and which I now ask the clerk to be good
24 enough to show to Mr. Amorosa.

25 MR. AMOROSA: Does your Honor wish a response

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Verzino-cross

at this immediate time?

THE COURT: Yes.

MR. AMOROSA: We oppose Mr. Soldano's motion for various reasons, one of which is we don't consider the matter to which he refers in his motion paper as coming under our obligation pursuant to Brady against Maryland. That, in substance, is our response. If your Honor wants an additional response from us, we will be happy to provide it.

THE COURT: Mr. Blossner, your memo handed up at 12:35 today will be made a part in detail from beginning to end of the transcript.

Mr. Court Reporter, here it is, and I will ask you to copy it into the record.

(The memorandum reads as follows:

"Hon. Judge Cooper

"As we discussed in your chambers, Mr. Soldano was originally indicted as Anthony Visconti. Mr. Amoroso now states that this was merely a mistake before the Grand Jury, and that the error came about as a result of Mr. Verzino's confessing with several other people and receiving erroneous information.

"I now demand, as the Government's continuing obligation to supply 'Brady' material, that I be supplied with all reports and testimony concerning this mis-identifica-

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Verzino-cross

tion and its background and basis. I further request that I be supplied with all Grand Jury testimony identifying Mr. Visconi and Mr. Soldano, both to Indictments No. 75 Cr. 24 and 75 Cr. 687.

"I request this information prior to my cross-examination of Mr. Versino, so that I need not be forced to explore this area in the blind. I maintain that it is up to defense counsel to determine the relevance of this material as 'Brady' material under Alderman v. U.S. 89 S. Ct. 961, 971(1969).

"Respectfully

"Robert Blossner

"Attorney for Defendant Soldano.")

THE COURT: Do you wish to add anything further to it?

MR. BLOSSNER: No, sir.

THE COURT: For the record, your application is denied, so that the rights of your client may be preserved.

MR. BLOSSNER: I abide by your ruling and I will have to adjust my cross examination accordingly.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. BLOSSNER:

Q Mr. Verzino, my name is Blossner. We have never

1 mmbr 4

2 met before, have we?

3 A I don't know.

4 Q At any rate, I have never questioned you before,
5 have I?

6 A No.

7 Q And, certainly, I have not prepared you in any
8 way to answer the questions I am about to put to you, have
9 I?

10 A No.

11 Q Mr. Verzino, in the state court you have told us
12 that you were arrested by both government and state
13 agents and actually indicted.

14 Can you tell us how many different indictments
15 were you on before Judge Goodman?

16 A I believe it was one indictment, many counts.

17 Q Can you tell us roughly what those counts were
18 about?

19 A There were four sales of a controlled substance,
20 meaning narcotics, a count of conspiracy. I think that
21 was it. I'm not sure. The indictment was amended.
22 I don't know what its final form was.

23 Q Those charges included the actual possession of
24 items that were found in the apartment at which you were
25 arrested?

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Verzino-cross

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A Yes.

Q Approximately 60 or so pounds of heroin?

A 60?

Q Approximately 24 kilograms?

A 26 pounds.

Q 26 pounds or kilograms?

A Pounds.

Q And there were quite some pounds of dilutants to add to the heroin?

A Yes, there was.

Q Now, you were allowed to plead to a certain type of felony in the state court, weren't you?

A Yes.

Q It was an 8.3 felony?

A Yes.

MR. AMOROSA: I am going to object to this line, because I think Mr. Edward Panzer has developed it completely.

THE COURT: I think so. I don't know what he is going to do. So I will give him a chance to get to the point.

Q At the time you took the plea you believed that the sentence would range from a minimum of one year to a maximum of life? Isn't that correct?

1 numbr 6

Verzino-cross

2 A Yes.

3 Q Whatever, the end was life parole? Is that cor-
4 rect?

5 A Yes.

6 Q Were you aware at the time you took that plea that
7 in the State of New York a sale of any amount, no matter
8 how small, of heroin entailed that particular sentence with
9 a minimum of one year and a maximum setting of a life
10 sentence? Were you aware of that?

11 A Yes.

12 Q Were you aware that if the sale had not been a
13 minimal amount, but had been an eighth of an ounce-- not
14 an eighth of a pound -- an eighth of an ounce or more,
15 it would have demanded a minimum sentence of six years
16 to life? Were you aware of that?

17 A No, I was not.

18 Q Were you aware that if the sale was of an amount
19 of two pounds, that is, approximately one eighth of a pound,
20 1/16 of a kilogram, of two ounces or more, that the minimum
21 sentence had to be 15 years, could have been 20 years to
22 life, and the minimum sentence you will have to serve
23 before you were even eligible to meet a parole board?
24 Were you aware that is what you were facing?

25 A Well, I was aware of a range of penalties, but I was

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Verzino-cross

not aware of the techniques that set them.

Q And the amount of the sales that you were charged with were well over two ounces, weren't they?

A Yes, they were.

Q You had no doubt that if you had to go to trial you would have been convicted in your particular case, did you?

A I don't know.

Q Mr. Verzino, in 1966 you were sentenced to 12 years. Can you tell us when that sentence expires?

A When it expires totally?

Q Yes.

A 1978.

Q Were you told upon accepting the provisions of parole that your parole ended in December of 1977?

A I don't recall.

Q You think during the two months you were on the street you took special care to to provide alibis and false employment to the parole officer to whom you were to report?

A Partially, correct.

Q The parole officer was a federal parole officer to whom you had to report? Isn't that correct?

A Yes.

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Verzino-cross

Q Had you been violated on your parole as of today?

A I don't know.

Q Have you been noticed that you had been violated?

A No.

Q Have you been taken into federal custody and asked to go back to Atlanta to finish your sentence until 1977?

A No.

Q And you are aware that if you were violated on parole, any sentence that you got after that would probably run from the date your 1977 sentence ends?

MR. AMOROSA: I object to the form of the question.

A No.

THE COURT: Well, it has been answered.

Next question.

A lot of this, counselor, has been fully and expertly brought out, and I am waiting for the crucial question, rather than a repeat of the same material. Please go right to the heart of your cross.

MR. BLOSSNER: Thank you for your patience, your Honor.

mmbr 9

Verzino-cross

Q Mr. Verzino, some time after you were arrested in the state you sent a message to David Cunningham that you wish to see him or someone from Mr. Rodger's office?

A That is correct.

Q And as a result of that Mr. Cunningham, who is an Assistant District Attorney in the State Special Prosecutor's Office and investigator or a detective from his office, came to see you in the courthouse at 111 Centre Street? Isn't that correct?

A Yes, I think so, yes.

Q Could you tell us what was the purpose of your asking to see Mr. Cunningham?

A I was trying to think about cooperating with him in order to better my position and to help my wife.

Q Did you try to feel them out at this first encounter?

A Yes.

Q Would you say they were feeling you out and seeing what kind of information you had to offer them?

A Yes, I would say so.

Q So you were actually testing them during that first encounter, weren't you?

A I was very uncertain about the whole thing.

1 mabr 10

Verzino-cross

2 Q About a day or so after that did you make a phone
3 call to their office or did they make a phone call to you
4 at the Manhattan House of Detention for Men?

5 A I think he told me to call him and I called him.

6 Q And did you call and speak to Detective Verzino?

7 A Yes, I did.

8 Q Did you discuss whether they were going to accept
9 your conversation with them the day before and use you and
10 would they be willing to help you out? Was that the basic
11 gist of that conversation?

12 A In part, yes.

13 Q During the course of that conversation didn't
14 you tell Perzina that you had certain friends that you
15 would not go against?

16 A I don't recall.

17 (Defendant Soldano's Exhibit A was marked for
18 identification.)

19 MR. AMOROSA: That is page 16 marked only for
20 identification?

21 MR. BLOSSNER: That is correct.

22 Q Mr. Verzino, I would ask you to look at Mr.
23 Soldano's Exhibit A, page 16. Mr. Verzino, does that
24 refresh your recollection as to whether you stated to the
25 detective that there were certain people you would not

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1 mmbr 11

2 testify against?

3 A No, it does not.

4 Q Do you remember being asked this question and

5 giving this answer: "No, I'm not -- See, I don't mind working,
6 it's just I don't want to go at it tough with my old friends,
7 you know?

8 "DET: You what?

9 "RES: I say there's a couple of my old friends
10 I don't want to go at, you know.

11 "DET: Look it.

12 "RES: Yeah?

13 "DET. I think you're missing a little bit of
14 my point.

15 "RES: Yeah."

16 MR. AMOROSA: I have to object to this line.

17 THE COURT: Objection sustained. When you ask
18 the witness the question, "Does this refresh your recol-
19 lection?" And he says, "No," that is the end of it, you
20 can't then read from anything not in evidence.

21 Next question.

22 Q Mr. Verzino, in this conversation you had with
23 Mr. Cunningham the day before the telephone call, did you
24 mention the name or describe in any way or shape or form
25 Anthony Soldano?

26 A No.

27 MR. AMOROSA: My objection goes to Mr. Blossner's
28 statement that the conversation with Cunningham was the day
29 before the call. That is not in the record. Other than
30 that I have no objection.

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Verzino-cross

THE COURT: If you will not keep repeating a date. I don't know how any witness can remember a given day of a given month. You keep doing it and doing it and doing it. Please don't do it, because it makes it ever so much more difficult.

Will you reframe your question, without giving any particular day?

MR.BLOSSNER: I will try to reframe it so it is acceptable.

Q During your initial conversation with Mr. Cunningham, when you were trying to give him things to sort of hook him and catch him, did you in any way, shape or form describe or talk about Anthony Soldano?

A No.

Q At the time you were initiating these conversations, you were quite upset, not only at your position, but at your wife's position also with regard to the law?

A That is correct.

Q Did the detective from the state prosecutor's office tell you during that telephone call that not only you, but in essence, your wife would be doing a minimum of 15 years?

A I don't know. I don't recall that much of the phone call.

mmbr 13

Verzino-cross

THE COURT: Then say so. That is the end of that. Next question.

MR. BLOSSNER: May I have page 23 marked Defendant Soldano's Exhibit B for identification.

(Defendant Soldano's Exhibit B was marked for identification.)

Q Mr. Verzino, I will ask you to look at Defendant Soldano's Exhibit B for identification and read that particular page.

Does that particular page refresh your memory as to whether the detective subtly told you that not only you but your wife would be doing a minimum of 15 years?

MR. AMOROSA: I object to word "subtly". I object to Mr. Blossner's use of the term "subtly told Mr. Verzino."

THE COURT: Objection sustained.

A I really don't recall the conversation or the phone call.

THE COURT: You don't recall?

Next question.

Q Mr. Verzino, as a result of any deal or bargain you conjured up with the various agents you have spoken to, you fully expected that your wife would be imprisoned;

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Verzino-cross

Is that correct?

A Basically, yes.

Q Your wife did take an active part in your enterprises?

THE COURT: He has pretty much given us that particular point, covered that particular point. I am sure the jury remembers the testimony.

Q Mr. Verzino, you told us yesterday that your wife travelled to Europe, travelled to France and Italy. Can you tell us when this travelling was done?

A Yes, to the best of my recollection, it was in 1972, I believe.

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1 mdr

Verzino-cross

5 pm

2 Q Shortly before you were released from Atlanta?

3 A No, not shortly before. Not to my recol-
4 lection.

5 Q You were released in August of 1973?

6 A Yes.

7 Q There came a time within a week or so that you were
8 released from Atlanta that you began to strike up an
9 acquaintanceship with a Mr. Culhane, isn't that correct?

10 A Yes.

11 Q And you began to deal in narcotics with Mr.
12 Culhane, isn't that correct?

13 A Yes.

14 Q Did you ever ask Mr. Culhane to procure
15 for false identification and passports for yourself and
16 for your wife?

17 A For myself and my wife?

18 Q Yes.

19 A I am not sure.

20 Q Do you remember speaking at all to Mr. Culhane
21 about the acquisition of passports and/or false
22 identification?

23 A I remember speaking about false identification,
24 yes.

25 Q Do you remember telling Mr. Culhane that Mario

1 mdr 2

Verzino-cross

2 Perna's picture was in every airport, that he couldn't
3 go, but that you and your wife would be able to if you had
4 passports?

5 A I don't recall telling him that. I don't know.

6 Q During your many and varied conversations with
7 Mr. Culhane, you were unaware that the United States
8 Government had a tape recorder planed on him, were you?

9 A No, I wasn't aware of it.

10 Q Since you were arrested you learned that to
11 be a fact, didn't you?

12 MR. AMOROSA: Learned what? It is hearsay.

13 I object.

14 THE COURT: That there was a tape recorder.

15 MR. AMOROSA: On what occasion. Is it every
16 occasion he met Culhane, is that what the request has gone
17 to? How would the witness know.

18 THE COURT: Will you answer that question generally
19 Mr. Verzino.

20 A I have been told that there are tapes, yes.

21 THE COURT: And you learned that since your arrest,

22
23 Yes.

24 THE COURT: Next question.

25 Q Since your arrest were you told in substance or

mdbr. 3

Verzino-cross

1 allowed to listen to some of those tape recordings?

2 A No, I was not.

3 Q Were you ever allowed to listen to any tape
4 recordings on which your voice appeared?

5 A Well, can I amend my last answer?

6 THE COURT: Surely.

7 A I was given -- by the Court we were given per-
8 mission to hear these tapes. We bought the tapes, or paid
9 the lawyers to get the tapes. However, the lawyers either
10 through -- I don't know, dilatory tactics or whatever you
11 want to call it -- never made the tapes available to me.

12 THE COURT: So you never actually heard it?

13 THE WITNESS: No.

14 THE COURT: You never heard it?

15 THE WITNESS: No.

16 THE COURT: Next question.

17 Q Since you were arrested did you have occasion
18 to listen to any tapes on which your voice was heard?

19 A Yes, I have listened partially to some tapes.
20 Yes.

21 Q Can you tell us what those tapes represented?

22 A One was a tape of Mr. Cunningham's office, and
23 one was a tape of -- part of the tape of this Mr. Perzina.

24 Q When was the last time you were allowed to listen
25

1 mdr 4

Verzino-cross

2 to those tapes?

3 A Maybe a month ago, three weeks ago. I don't
4 remember.

5 Q Was that during the time you were being prepared to
6 be a witness in this case?

7 A Yes, some time during the beginning of it. Yes.

8 Q At any time during those conversations that you
9 heard on the tape did you hear yourself talking about or descri-
10 ing anyone that could fit the description of Anthony Soldano?

11 A To my recollection, no.

12 Q Mr. Verzino, when did you first give any governmental
13 agent a description of the man you now believe to be
14 Anthony Soldano?

15 A I believe it was in August of '74.

16 Q And to whom was that description given?

17 A Several agents. Agent Cornloff and Agent Caffrey,
18 several state policemen, Sergeant Rolo, I would say,
19 of fhand, 8 or 9 persons. I don't recall all of them
20 that were there. I can't recall all of them. Some of
21 them were strangers to me.

22 Q Do you remember now what description you
23 gave to Agent Cornloff and Agent Caffrey in August of 1974?

24 A Generally, yes.

25 Q Will you tell us what that description was?

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Verzino-cross

1
2 A I said the man was of medium height or a little
3 better, stocky, seemingly large boned with well kept hands,
4 and balding, he was well dressed, and in my estimation
5 anywhere between 45 and 55 years old.

6 Q Did you describe him by name, Anthony Soldano?

7 A No.

8 Q Did you tell Agent Cornloff, Caffrey, and the
9 others, at that time what you believed his name to be?

10 A Tony, that's all. I said Tony.

11 Q When was the next time you were given an opportunity
12 -- I will withdraw that.

13 You saw the man that you described as Anthony
14 Soldano on or about January 30th of 1974, is that cor-
15 rect?

16 A That is correct, yes.

17 Q When was the next time after that that you
18 were given an opportunity to view the person that you
19 believed to be Anthony Soldano?

20 A Physically?

21 Q Physically, by photograph, any way, shape or
22 form.

23 A Some time within the last six months I was given
24 a large group of photographs and asked to pick out the picture
25 of anyone there whom I know or had done anything with.

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Verzino-cross

I went through the photographs and I picked out Tony's picture. I didn't know him to be Mr. Soldano.

JUROR NO. 7: I am sorry, I am going to have to step out.

THE COURT: Certainly. You go right ahead, and we will wait for you.

JUROR NO. 7: I will just be a minute.

THE COURT: Don't rush. Take your time.

(Pause.)

THE COURT: On the record.

This seems to be senseless on my part. It is five minutes to five. The juror is having a choking spell. We will call it quits for the day, ladies and gentlemen. Tomorrow morning please be here at 9 o'clock, and we will sit only until 1.

May I tell you in advance that because the courtrooms will be closed on Monday, Columbus Day, that we will not hold court. In all likelihood I will be here but I will be in chambers, not in the courtroom, but you can't be here on Monday so don't worry about Monday. Tomorrow I will tell you what time we will meet on Tuesday.

But tomorrow 9 o'clock on the dot. We will sit until 1 o'clock tomorrow.

Don't forget, in case I forget, on Tuesday we go

1 mabr 7

Verzino-cross

2 to another courtroom, so be sure that I don't forget to tell
3 you, the jury, tomorrow what courtroom we gather in next
4 Tuesday.

5 So tomorrow what time are you supposed to be
6 here?

7 JUROR NO. 4: 9 o'clock.

8 THE COURT: 9 o'clock.

9 All right, we will call it quits for the night,
10 Madam Forelady, and 9 o'clock tomorrow morning until
11 1 o'clock.

12 Will you tell the lady that we hope she will be
13 well and able to come. What are the indications? Has she
14 got a fever or something?

15 JUROR NO. 1: No.

16 THE COURT: All right.

17 (Jury excused.)

18 MR. AMOROSA: If I may just say something on the
19 record, your Honor. I want to repeat something I said
20 off the record earlier today. In the event that Mr. Lucas
21 takes the witness stand in this case we will not use his
22 prior narcotics conviction to impeach him, and in the event
23 that Mr. Chapman takes the witness stand we will not use
24 his prior narcotics conviction to impeach him.

25 Thank you, your Honor.

1 mdr 8

Verzino-cross

2 MR. BLOSSNER: If your Honor please --

3 MR. HOFFMAN: Do you intend to cross examine
4 him at all?

5 MR. AMOROSA: If Mr. Lucas takes the witness
6 stand, yes, we intend to cross examine him.

7 THE COURT: All right.

8 MR. CHANCE: How about Mr. Chapman, if he takes
9 the witness stand?

10 MR. AMOROSA: Yes.

11 MR. LANG: How about Mr. Gwynn?

12 MR. AMOROSA: Yes, and utilize his prior conviction
13 for manslaughter to impeach him.

14 MR. J. PANZER: And Mr. DeLutro, not to utilize
15 any prior convictions outside of the conviction of 1971.

16 MR. AMOROSA: Our statements with respect to
17 the utilization of prior convictions, your Honor, assume
18 the absence of any statement opening up that area.

19 THE COURT: Very well. That is frank enough.
20 Do you gentlemen want to come in for anything
21 further now?

22 MR. BLOSSNER: Yes, sir, if your Honor please.

23 In view of the witness' disclosure at this time
24 that in August of 1974 he gave a description which purported
25 to be the man ultimately identified as Anthony Soldano--

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Verzino-cross

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2 I would ask if any reports or memos or notes made by those
3 agents at the time that that description was given should
4 be handed over to me as Brady and as Alderman material.

5 MR. AMOROSA: For the record, if we wrote anything
6 down this man said as to Mr. Soldano's description, -we
7 would have had to turn it over already as 3500 material.
8 It is not in our possession. The only thing that has been
9 turned over is everything that we have with respect to that.

10 THE COURT: There it is. There is an answer.
11 He has already done it. If it is not in there it is not
12 in there, but he has given you everything he has got.

13 Good night, gentlemen.

14 (Time noted: 5 p.m.)

15 (Adjourned to Friday, October 10, 1975, at
16 9:00 o'clock a.m.)
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BLOSSNER

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Number 1

United States of America

v.

75 Cr. 687

Joseph Magnano

New York, New York

October 10, 1975
10:00 o'clock a.m.

(Trial resumed.)

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen.

I am very pleased, Miss Vining, you are
feeling better. I have your charming note, which is one
of the rewards that come to a Judge. I shall keep it.
Thank you.

Proceed.

ANTHONY VERZINO, resumed.

CROSS EXAMINATION (Continued)

BY MR. BLOSSNER:

Q Mr. Verzino, just to quickly recapulate and
bring us into scope from yesterday, when last you left
you had said that some time in August of 1974 you had given
a description to agents of a man you knew as Tony that
you now identify as Anthony Soldano? Is that correct?

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Verzino-cross

A Yes, sir.

Q Before August of 1974, the last time you saw that person or the person you identified to be that person, was in late January of 1974? Is that correct?

A Yes.

THE COURT: By the way, I should tell you, Mr. Witness, and I wish the record to show, you undoubtedly know that you are continuing with your testimony under oath? You understand that?

THE WITNESS: Yes, sir.

Q Do you remember now the description that you gave the agent in August, 1974?

A Yes.

Q Can you tell us that description?

A A man of medium height or slightly above, stockily built, fairly large boned, bald, balding, well dressed, well kept hands at that time, pallid, and to me Mediterranean type.

Q Mediterranean type?

A Yes, that is in build, you know, gesture.

Q You told us that the next time you had the opportunity to observe in any way, shape or form the person that you believe to be that person was approximately six months ago from today when you were given the opportunity

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Verzino-cross

to look at a picture?

A Not a picture -- pictures.

Q And you saw a picture that you believed to be him?

A Yes, sir.

THE COURT: Don't say "him."

Q Which you believed to be the same person that you saw in January of 1974?

A Yes.

THE COURT: And that you had been calling Tony?

THE WITNESS: Yes.

THE COURT: And which you found later the surname of that person is Soldano? Is that what you are saying to us?

THE WITNESS: Yes.

Q Well, in the interim did there ever come a time when you were led to believe that his last name was not Soldano?

A Yes.

Q Can you tell us what name you believe it to be?

A I was told it was Visconti.

Q Can you tell us who told you that?

A I don't know who told me first; various agents asked me.

Q In other words, it was agents of the federal

1 numbr 4 Verzino-cross

2 government who told you that the man you observed, his name
3 was Visconti?

4 A At first? I believe at the first it was another
5 informant.

6 Q Did the man you saw in January of 1974 ever relate
7 to you that his name was Visconti?

8 A No.

9 Q When were you told that the name was Visconti?

10 A Some time in the fall of 1974.

11 Q Well, isn't it a fact that you appeared in a grand
12 jury in December of 1974 and in the grand jury you stated
13 that the person's name was Tony, you didn't know his last
14 name?

15 A Yes, I believe that is a fact, yes.

16 Q In fact, you were unable in December, 1974, to
17 tell the grand jury anything else about this person, other
18 than his name was Tony, and you didn't know his last name?

19 A I think that is so, yes.

20 Q So after December and before you identified the
21 person, within that time period agents or an informant told
22 you that that person's name was Visconti?

23 A Well, they didn't tell me his name was Visconti;
24 they told me that is a name they thought it might be

25 Q You are aware now that the indictment on which

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Verzino-cross

2 these gentlemen are on trial supplemented an indictment
3 in which a man was identified as Tony Visconti or Anthony
4 Visconti?

5 MR. AMOROSA: I object to that and move to
6 strike it as irrelevant. We are on trial in a superseded
7 indictment in which Mr. Soldano is named.

8 Q Just asked is totally irrelevant.

9 MR. BLOSSNER: I believe this jury has the right to
10 know that a man identified now as Anthony Soldano was once
11 identified in an indictment as Tony Visconti.

12 THE COURT: There is no secret about that.
13 The grand jury was told that the man we now know as
14 Anthony Soldano once thought to be Anthony Visconti, and
15 when the error was detected it was remedied, and the name
16 Soldano was inserted instead of Visconti.

17 That is the whole business as I see it.
18 If there is anything I omitted, you can tell me.

19 Q Mr. Verzino, that error in calling him Visconti
20 was not your error, was it?

21 A No.

22 Q In fact, that was information that was fed to you
23 by either another informant or by agents? Isn't that
24 correct?

25 A It was not fed to me originally, no.

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Verzino-cross

2 Q You were led to believe that between the time
3 you appeared in the grand jury in December of 1974 and the
4 time you entered the picture in 1974 that the man you were
5 talking about, his name was Anthony Visconti?

6 A I assumed so.

7 Q Mr. Verzino, you told us that this gentleman you
8 met on two days in January of 1974 was wearing a hat?
9 Is that correct?

10 A At times, yes.

11 Q Can you tell us in relationship in time, the
12 time you spent with him, how long he was wearing a hat and
13 how long he was not wearing a hat?

14 A I could not give you any accurate estimate of that.

15 Q Can you tell us, was he wearing a hat when you
16 saw him in the street outside Jimmy's BackYard or whether
17 he was not wearing a hat then?

18 A He was wearing a hat.

19 Q When you saw him in the street in the daytime
20 he was wearing a hat?

21 A As I recall, yes.

22 Q When you saw him at night in the car was he
23 wearing a hat?

24 A At night? You mean in the evening?

25 Q In the evening.

1 mmbbr 7

V. zino-cross

2 A Yes, I believe so.

3 Q And you said it in the evening. Can you tell
4 us approximately what time that was?

5 A It was a time period from about, I would say,
6 first meeting, 5 o'clock, till about 7, 7:30, between the
7 two meetings.

8 Q 5 o'clock in the evening of January on a winter's
9 day of 1974? Is that correct?

10 A Yes.

11 Q Were you able to observe when he was wearing
12 a hat that he was partially bald?

13 A No, not when he was wearing a hat.

14 Q When you gave a description some six or seven or
15 eight months later to the agents, were you able to tell
16 the agents whether he was absolutely bald in the front,
17 partially bald in the rear, or any other description as to
18 his hair?

19 A Right now I don't recall exactly how I described
20 him, exactly, or what words.

21 Q Were you able to tell the agents in August of
22 1974 the color of his hair?

23 A No, I believe I used the word "dark."

24 Q You could not even tell them if his hair was
25 brown, black, dark blond?

1 mmbr 8 Verzino-cross

2 A I don't recall.

3 Q Isn't it a fact from what you have told us, the
4 only time you had an opportunity to observe that person
5 was either in a winter evening or inside a car or in daylight
6 when he was wearing a hat?

7 A Is that a question?

8 Q That is a question.

A Yes.

10 Q You told us you never saw that person before that
11 day? Is that correct?

12 A That is correct

13 Q You were informed some time in January, 1974,
14 that an indictment had been returned in the case in which
15 you testified in the grand jury? Is that correct?

16 A Well, I was taken to the grand jury.

17 Q You testified in the grand jury in December of
18 1974?

19 A I don't recall exactly when it was, but some time
20 in the winter.

21 Q Did there come a time when you were informed that
22 various people who had been mentioned were arrested in
23 January of 1975?

24 A I don't recall. I read the newspaper.

25 THE COURT: Will you just answer the question

1 mmbx 9

Verzino-cross

2 "I don't recall."

3 Q Up until that point you had not had the opportunity
4 to observe those pictures? Is that correct?

5 A Those particular pictures?

6 Q Yes.

7 A Yes, that is correct.

8 Q If I were to tell you that given the opportunity
9 to observe these pictures you described in March of 1975
10 would I be correct?

11 A I believe so. I am not sure.

12 Q Were you told upon looking at those pictures
13 or just before looking at those pictures the circumstances
14 under which those pictures were taken?

15 A No.

16 Q Were you asked when you looked at those pictures
17 if you could recognize any of the other people in those
18 pictures?

19 A Yes.

20 Q And of those 20 or so pictures were you able to
21 recognize any other parties?

22 A Yes, I believe so, yes.

23 Q Will you tell us approximately how many?

24 A I don't recall.

25 Q Three or four or five?

1 mmbr 10 Verzino-cross

2 A It could have possibly been, yes, five, maybe
3 ten. I don't recall.

4 Q So out of 10 or so pictures, approximately 15
5 might have been people that you didn't think you knew?

6 A It would be hard for me to say. I don't recall.

7 Q Would it be fair to say that out of 20 or so
8 pictures you were shown, some of them you definitely knew?

9 A I would think so, yes, to the best of my recol-
10 lection, yes.

11 MR.BLOSSNER: Mr. Clerk, I ask you to mark this
12 as Defendant Soldano's next exhibit.

13 MR. AMOROSA: I believe that is Government's
14 Exhibit 86 for identification.

15 (Defendant Soldano's Exhibit C was marked for
16 identification.)

xxx

17 Q I will ask you to look through Defendant
18 Soldano's Exhibit C, Mr. Verzino. Are you familiar with the
19 contents of Defendant Soldano's Exhibit C?

20 A I just looked at it, yes.

21 Q Did you ever see the contents of this exhibit
22 prior to today?

23 A Yes, I believe I did.

24 Q Are these the pictures from which you believed you
25 picked out a picture of Mr. Soldano?

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Verzino-cross

A I think they are. I am not sure.

MR BLOSSNER: I will now offer Defendant Exhibit C
in evidence.

MR. AMOROSA: No objection.

THE COURT: Received. Mark it in evidence,
please.

(Defendant Soldano's Exhibit C was received

in evidence.)

xxx

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Verzino-cross

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MR. BLOSSNER: If your Honor please, at this

3

time Mr. Amorosa and myself will join in a stipulation that

4

the defendant Soldano's Exhibit C are the pictures which were

5

given to Mr. Verzino from which he picked out Mr. Soldano's

6

picture.

7

THE COURT: Is that right, Mr. Amorosa?

8

MR. AMOROSA: Yes, sir, we so stipulate.

9

THE COURT: The jury has heard the stipulation.

10

That's that.

11

All right, next question, please.

12

Off the record.

13

(Discussion off the record.)

14

THE COURT: Go on, counsel, finish your cross.

15

Q Mr. Verzino, if I were to tell you that it was

16

a fact that the pictures in Exhibit C were not taken until

17

March 14, 1975, would you agree that you had no opportunity

18

to identify this picture or in any identify Mr. Soldano for

19

some fourteen or fifteen months?

20

A If that's a fact, yes, I would agree.

21

Q And prior to those two weeks, on which you

22

had seen this person you had not seen that person before?

23

A No, I had not.

24

Q Mr. Verzino, you were familiar with James

25

Culhane, is that correct?

mdlt 2

Verzino-cross

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A Yes, I was.

Q In fact, you entered into a business relationship with him relative to narcotics, and there came a time in which you expressed a trust and loyalty to Mr. Culhane. Wouldn't that be correct?

A Not completely.

Q Well, did there come a time when you gave Mr. Culhane money towards the purchase of a car for himself?

A I lent him money, yes.

Q Did you help him establish himself in an apartment?

A Yes.

Q Was that apartment actually one of your prior stashes?

A Yes.

Q Did you give him money towards furniture or some other matters in that apartment?

A No.

Q Did you give him money towards rent in that apartment?

A No.

Q But you did allow him to move into that apartment as an aid to himself, didn't you?

A We had vacated the apartment. I told him he

1 mdlt 3

Verzino-cross

2 could have it.

3 Q And in that apartment you had what you would
4 describe as traps, didn't you?

5 A Yes.

6 Q Could you tell the jury, what's a trap?

7 A It is a compartment, a secret compartment, a
8 cache, a secret compartment.

9 Q What would you put in that secret compartment?

10 A Anything that -- I guess contraband or something
11 of value.

12 Q Did you ever secret drugs in that compartment?

13 A Yes.

14 Q Did there ever come a time when you asked Mr.
15 Culhane to go to the apartment or another apartment to obtain
16 a pistol which you had in a trap?

17 A Did I ask Mr. Culhane to go to --

18 Q Yes.

19 A No. Not that I recall.

20 Q During that period, you did come at least to
21 rely and trust on Mr. Culhane, didn't you?

22 A I have answered. Not completely.

23 Q Did you sell him drugs?

24 A Yes.

25 Q Did you give him drugs on credit?

mdlt 4

Verzin-cross

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A Yes.

Q Did you give him more drugs than he asked for on credit?

A No.

Q Did there ever come a time when he asked for an eighth of a kilogram of heroin and you said, "Take a quarter, you will do better?"

THE COURT: Counsel, I have given you wide opportunity --

MR. BLOSSNER: If your Honor please, I am just finishing up.

THE COURT: Then finish up, but that question is so weak in the light of what the witness has confessed, and the amount of drugs in which he said he daily dealt with over a period of years that to pick out one significant event that makes the rest of it gigantic by proportion seems to me to be a waste of time. It is like a pimple.

MR. BLOSSNER: This was the basis of my next two questions.

THE COURT: I have asked you repeatedly, and told all of you, to prompt the witness in the light of what has always been brought out by different attorneys, confront the witness with the thrust of your point. Put it right to him. That's it. I am encouraging it. I have even told you I

1 mdlt 5 Verzino-cross

2 would take a leading question.

3 Go ahead, no.

4 Isn't it a fact that --

5 Q Mr. Verzino --

6 THE COURT: Go on.

7 MR. BLOSSNER: Withdrawn.

8 Q Mr. Verzino, while you are not sure as to a
9 date, a specific date, you are sure that within a day or so
10 prior to Mario Perna's being arrested in New Jersey, you secure
11 drugs from the person you now call Anthony Soldano?

12 A Yes.

13 Q If I were to tell you that Mario Perna was
14 arrested on February 1, 1974, would you limit your testimony
15 there as to that transaction being January 28th or 29th or
16 the 30th of 1974? A day or two prior to the arrest of Perna?

17 A Well, it was a day or two or three. The most,
18 three, I would assume.

19 Q Within that particular period, those two or three
20 days, or within a week thereof, did you make any other major
21 purchase of drugs?

22 A No.

23 Q If I were to tell you that on February 1, 1974,
24 you related to Mr. Culhane, whom you somewhat trusted, that
25 you had just scored heavily off a Frenchman the day before,

1 milt 6

Verzino-cross

2 would I be incorrect?

3 A I don't think so, no.

4 MR. BLOSSNER: I have no further questions,
5 your Honor.

6 I would suggest that the jury be allowed to
7 look through Mr. Soldano's exhibit.

8 THE COURT: They will have that opportunity.
9 They will have plenty of opportunity to look at it.

10 Mr. Hoffman, please proceed.

11 MR. HOFFMAN: Did you want to go, Mr. Chance?
12 Either one, I don't care.

13 MR. CHANCE: If your Honor please, on behalf of
14 William Chapman, at this time I have no cross examination.

15 THE COURT: Very well.

16 MR. LANG: Your Honor, on behalf of John Gwynn
17 I have no cross examination at this time.

18 THE COURT: All right, Mr. Hoffman.

19 MR. HOFFMAN: Good morning, ladies and gentlemen.

20 If it please your Honor, before I begin, in
21 the hopes of saving some time on my cross examination there
22 were areas gone into the other day concerning certain activi-
23 ties of Mr. Verzino's wife and certain conversations between
24 them, most of which, or a great deal of which he didn't know.
25 His answer was "I don't know," or "I don't remember," or

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Verzino-redirect

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THE COURT: Is that it?

THE WITNESS Some conversation. It is a long time ago. He said it was heroin.

THE COURT: Do you remember the conversation?

THE WITNESS: No I don't.

Q When did that occur? Was it 1940 or the late 1940s?

A Late 1940s.

Q You testified in response to some questions by Mr. Blossner about a fellow by the name of Tony Christopher. When did you first hear the name Tony Christopher?

A Some time in the winter of 1974.

Q And from whom did you hear it initially?

A Another the agents or another informer.

Q How did it come up, Mr. Verzino? In what context?

A I was asked if this man Tony's name could be Christopher. I said I didn't know.

Q What man?

A The man I knew as Tony Soldano.

Q Did you speak to anyone with respect to establishing his last name?

A Yes, many people.

Q And whom were you referring to when you just said

1 numbr

2 somebody said this man's name could be Visconte?

3 A A man named Christopher.

4 Q Will you relate the conversation you had with him
5 in connection with that subject matter?

6 MR. BLOSSNER: I object to any conversation with any
7 Mr. Christopher.

8 THE COURT: You went into this whole matter,
9 Mr. Blossner, trying to show that this witness was basing
10 his whole identification on your client with fiction and
11 not on fact, and I allowed you to go into it to a great
12 extent. Objection overruled.

13 MR. BLOSSNER: I limited myself. I just wanted
14 the jury to understand that this man was first indicted under
15 the name of Visconte.

16 THE COURT: You are making a great deal out of the
17 fact that the grand jury used the name Visconte. But the
18 person that the grand jury meant was no one other than
19 Anthony Soldano.

20 MR. BLOSSNER: I limited myself to the rules
21 of evidence.

22 THE COURT: I am allowing this question.
23 You developed some of it, and the government has the right
24 to have this witness explain how he came to use that name,
25 Visconte, and he is telling you that he got from someone

1
2 named Christopher.

3 Who was Christopher?

4 THE WITNESS: Christopher was another informer.

5 THE COURT: And what was the conversation?

6 What did he say?

7 THE WITNESS: He was asked if he knew a man.

8 THE COURT: By whom was he asked?

9 THE WITNESS: Well, he was asked by me if he knew
10 a fellow named Tony from downtown. He said, "Yes." And
11 the agents asked me to ask him, and then he went to the
12 telephone to talk to the agents, and then the conversation
13 I was not privy to it. I don't know what he told the
14 agents.

15 THE COURT: What did he tell you?

16 THE WITNESS: He said yes, that he knew such a
17 man.

18 Q You testified previously that you turned over
19 subsequent to your cooperation documents to the government
20 through your cousin Guido ?

21 A Yes.

22 Q Let me show you Government's Exhibit s in evidence
23 6 and 7 and ask you whether they are two documents that came
24 over that way?

25 A Yes, I believe they are, yes.

1 mdlt 30

Verzino-recross

2 further on that score.

3 MR. HOFFMAN: May I make one point, your Honor?

4 That question is not asked for that purpose.

5 What I am asking him is whether or not he was told by the
6 detective not about what he would be given, that just happens
7 to be in the statement, but whether or not if he testified
8 in what the detective said was the proper manner as opposed
9 to anything else.

10 THE COURT: You brought that out, and you hammered
11 away at it on cross. I got it, the jury got it. Objection
12 sustained. That gives you a compliment that ought to be some
13 kind of consolation, I don't know, but you went into it very
14 thoroughly.

15 What else is there, Mr. Hoffman?

16 MR. HOFFMAN: Nothing else.

17 THE COURT: Any other recross?

18 MR. AMOROSA: I have three questions on redirect.

19 MR. BLOSSNER: I am in the corner, and everybody
20 forgets about me.

21 THE COURT: I have no forgotten you, and I shall
22 not forget you, and not because of your superior size.

23 RECROSS EXAMINATION

24 BY MR. BLOSSNER:

25 Q Mr. Verzino, you testified on redirect that

mdlt 31

1 after your arrest, after you began to cooperate, you gave the
2 government the names of all of your French connections, is
3 that correct?

4 A In essence, yes.

5 Q In your speaking to Mr. Cunningham and his
6 agents, did you ever tell them that you also had connections
7 and sources in Bolivia, Chile, Peru, and even Argentina?

8 A Well, that's if -- yes, I gave them names and
9 addresses of those places, but they weren't connections.

10 Q You gave them names and addresses in those
11 places also, is that correct?

12 A Yes.

13 THE COURT: Names and addresses of what?

14 THE WITNESS: Persons who could possibly be
15 reached.

16 THE COURT: In connection with drugs?

17 THE WITNESS: Yes.

18 Q Did you initiate your conversations as to those
19 names and addresses by telling Mr. Cunningham or Detective
20 Procino that those in fact were some of your sources for
21 drugs?

22 A I don't recall saying they were some of my
23 sources.

24 Q So you just told them "These are places I can
25 get drugs, but they are not my sources"?

mdlt 32

Verzino-recross

MR. AMOROSA: I object. If he is referring to anything said while the tape was recording because we have the tape and we will know exactly what was said.

THE COURT: Yes.

MR. BLOSSNER: This is not based on the tape recording but on what was said on redirect.

THE COURT: Yes, but you're wasting our time. Go on to another question.

MR. BLOSSNER: I will go into another area.

Q Mr. Verzino, you testified a few months ago that you had a conversation with a Mr. Nicholas Christopher and several agents relative to a Mr. Visconti. Are you positive at this time whom it was, either the agents or this Mr. Christopher, who suggested the name Visconti?

A Well, I'm fairly positive who it was, but I don't remember who he suggested it to.

Q Whom are you fairly positive it was suggested this name Visconti?

A Mr. Christopher.

Q But could it have been the agents?

A No. It was Mr. Christopher.

Q ~~So now you are definite and not fairly positive,~~ but you are definite, it was Mr. Christopher who suggested this name Visconti?

mdlt 13

A To whom did they suggest it to begin with? I don't know what you're -- the exact thrust of your question. Are you asking me who suggested it to me, or --

THE COURT: Yes, who suggested it to you. The name Visconti.

THE WITNESS: That I'm not sure. I believe it was the agents. I'm not quite sure.

THE COURT: All right. Next question.

Q You also stated a few moments ago that you had a conversation with this Mr. Christopher about this Visconti character. Is that correct?

A No, not about this Visconti character.

Q Well, do you now believe that the conversation you had in the winter of 1974-75 with agents and/or this Mr. Christopher, and this Mr. Visconti, do you now believe that that Mr. Visconti and the person whom you believed to be Mr. Soldano, are two different people?

A I don't even know if Mr. Visconti exists.

Q Mr. Verzino, did the party whom you now believe to be Mr. Soldano ever hold himself out to be Anthony Visconti?

A No, he did not.

MR. BLOSSNER: No further questions, your Honor.

THE COURT: Very well.

Any recross?

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2 motion for a hearing pursuant to Simmons v. United States
3 for a hearing to determine the adequacies of the identifi-
4 cation process.

5 THE COURT: Denied.

6 MR. BLOSSNER: I now join my co-counsel in
7 moving pursuant to Rule 29 on behalf of the defendant
8 Soldano also ask the Court to find that the identifica-
9 tion of the defendant Soldano solely through the witness
10 Verzino in the situation that he was identified some
11 fourteen months later than the act of having first having
12 indicted one Anthony Visconti, who seems to be non-existent,
13 I find that the only testimony linking Anthony Soldano with
14 this conspiracy is incredible as a matter of law, and so ask
15 you to rule.

16 THE COURT: Denied.

17 MR. HOFFMAN: If it please your Honor, on behalf
18 of the defendant Lucas, I at this time make the initial
19 motion which was reserved and which your Honor stated we
20 did not waive of course, but was reserved to this time to
21 dismiss the case at the end of the government's case, that
22 there was insufficient evidence adduced to show a prima
23 facie case.

24 Secondly, I move under Rule 29 at the end of the
25 entire case for a judgment of acquittal on the basis that

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2 there has not been sufficient credible evidence to prove
3 the case beyond a reasonable doubt.

4 THE COURT: Denied.

5 MR. GOLDBERG: We haven't reached the end of the
6 entire case yet, have we?

7 THE COURT: No.

8 MR. CHANCE: If your Honor please, I move for
9 a judgment of acquittal on behalf of William Chapman based
10 on the cases of United States versus Jones and United States
11 versus Falcolm and United States versus Simmons.

12 May I read from a statement in the case?

13 In considering whether an individual was a
14 member of a conspiracy, you must determine whether or not he
15 in some sense sought to promote the venture, to make it
16 their own, and have a stake in its outcome. The fact that
17 one may have associated with a member of a conspiracy is not
18 sufficient by itself to make that individual a member of that
19 conspiracy.

20 THE COURT: I shall so charge, word for word.

21 MR. CHANCE: If your Honor please, in this
22 record and up to this point, Chapman falls within the
23 purview of those cases, and I believe according to your own
24 recollection there has been no attachment of Chapman in this
25 record. There are three statements which are at most the

Anthony Stassi in the Atlanta heroin conspiracy, that if Verzino were recalled as a witness he would testify that the reason that he failed to disclose the participation of Anthony Stassi and Joseph Stassi in the Atlanta heroin conspiracy was that he had a close relationship with the Stassi family and was, therefore, unwilling to disclose their involvement, until he was told that they had been part of the agreement with Perna to kill Verzino and his wife in 1972."

I now offer the typewritten copy of this.

THE COURT: Any objection?

MR. AMOROSA: No, sir.

(Defendant Magnano's Exhibit J was received in evidence.)

MR. E. PANZER: With that we rest.

THE COURT: There is another stipulation involving Mr. Blossner's client, the defendant Soldano.

MR. BLOSSNER: I premarked this stipulation as Soldano's Exhibit D.

"It is hereby stipulated and agreed between Mr. Amorosa and myself that Anthony Soldano was present at 131 Mott Street in the City and County of New York on March 13, 1975, that on that occasion federal and city law enforcement authorities raided that premises in the

1 belief that a dice game was in progress, that Mr. Soldano,
2 along with several other people, was given an appearance
3 summons requesting his appearances in a New York City
4 criminal court on the charge of loitering for the purpose
5 of gambling, that that charge was dismissed by the
6 District Attorney of New York County with the defendant
7 Soldano's appearance in court on that charge, that most
8 of the photographs in Defendant Soldano's Exhibit C,
9 which is in evidence, including and specifically including
10 Mr. Soldano's photograph, were taken at the time of the
11 issuance of that summons, that Defendant Soldano's Exhibit
12 C was exhibited to Anthony Verzino only after March 14th of
13 1975, that prior to July 10th of 1975, the name Anthony
14 Visconi appears in place of the name Anthony Soldano in
15 the present indictment."

16 I now offer the stipulation in evidence.

17 THE COURT: Any objection.

18 MR. AMOROSA: No, sir.

19 (Defendant Soldano's Exhibit D was received
20 in evidence.)

21 THE COURT: Now, as I recall it, all the defendants
22 have rested. The stipulations have been read. Unless
23 I hear to the contrary, I will take it that the record
24 should reveal that each defendant now rests and renews the
25

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MR. EPSTEIN: It is included in my request to charge as number three.

MR. AMOROSA: I have that right here.

THE COURT: Will you please hand him a copy of DeLutro's supplemental request? Read it now and we will wait.

MR. AMOROSA: Judge, we oppose this request.

THE COURT: Granted in substance.

Now we come to Mr. Chance's requests.

MR. CHANCE: I waive as to mine. I think it has been incorporated in the others you have gone over.

THE COURT: Thank you very much. You say there is no need to rule on your requests because we have already dealt with the substance of each one of your requests to charge?

MR. CHANCE: Yes, satisfactory to me.

THE COURT: Thank you, Mr. Chapman.

MR. CHANCE: May I correct the record to read Chance? You said Chapman.

THE COURT: Forgive me. I meant Mr. Chance on behalf of the defendant Chapman.

We now come to the requests submitted by the defendant Soldano.

MR. AMOROSA: Yes, sir, the one request with

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1
2 respect to the identification.

3 THE COURT: What is the Government's position?

4 MR. AMOROSA: Judge, we have no objection if
5 this is granted in substance, but we think it is entirely
6 too long in the current state.

7 THE COURT: You are now talking about Soldano's
8 request with regard to identification and we agree with
9 your comment. We shall charge as to the essence of it.
10 It is granted in substance.

11 MR. BLOSSNER: It is based on the model charge
12 of the Second Circuit and the Ninth Circuit and it is the
13 only issue in this case as to the defendant Soldano and
14 the only request submitted. It would take just one minute.

15 An overall view of the entire trial I believe
16 every word is necessary.

17 MR. AMOROSA: Judge, we think that the only thing
18 necessary with regard to this request is what appears on
19 the bottom of the first page in quotations, quoting
20 United States against Edward, a Third Circuit opinion in
21 1971. That we would say should be charged.

22 As to the other language, we simply ask your
23 Honor to charge it in substance.

24 THE COURT: We agree with the Government's posi-
25 tion and we will rule that that request is denied, except

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as charged.

MR. BLOSSNER: If your Honor please, I must take exception.

THE COURT: I am sorry. I dealt with it. You have been persistent throughout. I encourage your persistence, but comes a point where the Court must halt you. I have heard your argument backwards and forwards. It is denied, except as charged.

Now we come to Mr. Epstein's requests to charge on behalf of the defendant Bolella. Is that not so?

MR. AMOROSA: Yes.

THE COURT: We come to request number one. What is the Government's position?

MR. AMOROSA: We oppose that, except as requested by the Government.

THE COURT: Granted in substance. One is granted in substance.

Any comment by the Government on two?

MR. AMOROSA: Yes, we ask that that request not be given at all in this case. The language of this particular case is not even handled in our opinion at all.

THE COURT: Denied, except as charged.

MS. OBERMAN: May I make a comment here for the defendant DeLutro as to Bolella's request number two? I

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2 THE COURT: Are there any exceptions or requests
3 on behalf of any defendant?

4 MR. GOLDBERG: Your Honor, I rise on behalf of
5 the defendant Pallatta with regard to your charge on
6 reasonable doubt. The defendant Pallatta excepts to your
7 failure to charge in the negative, that a reasonable doubt
8 is such a doubt as would cause the jury to hesitate to act
9 in matters of importance in their own lives.

10 THE COURT: The exception is noted. The
11 Court will stand on the charge as given.

12 Any other exceptions or requests?

13 MR. EPSTEIN: On behalf of the defendant Bolella,
14 the defendant Bolella takes exception to the Court's
15 Pinkerton instruction, the instruction to the jury that
16 before it can convict a defendant of any of the substantive
17 acts which are in the indictment, they must find he was
18 a member of the conspiracy at the time the substantive act
19 was committed. Your Honor has instructed the jury
20 if they find one a member of the conspiracy, that
21 individual is bound by the acts and declarations of the
22 conspirators prior to the time of his joining and after
23 the time of his joining. I submit that charge is erroneous
24 under Pinkerton.

25 Your Honor, I also object to the Court's charge on

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2 prior similar acts, as set forth in the record by me earlier.
3 The introduction into this case --

4 THE COURT: You have already elaborated on that,
5 and I know what you refer to. Tell me what else you have?

6 MR. EPSTEIN: May I have a moment, your Honor?

7 Your Honor, the only additional exception to the
8 Court's charge, your Honor charged the jury that in consider-
9 ing the substantive counts they could find that someone
10 was guilty if he were in actual or constructive possession
11 of the contraband as set forth in the substantive counts.
12 Your Honor, I submit under the statutes which are involved,
13 the proper charge to the jury is on aiding and abetting.

14 THE COURT: Very well. Exception is noted.

15 MRS. OBERMAN: Your Honor, most respectfully
16 on behalf of the defendant DeLutro we except to your Honor's
17 charge as to the second element of the conspiracy, that
18 whether a defendant is a member of a conspiracy is a fact
19 to be drawn from all the evidence in the case, and again,
20 your Honor's statement that the only way of determining
21 if the defendant entered into a conspiracy is to take into
22 account all the facts and all the evidence in the case.
23 We submit that the proper statement of the law is contained
24 in DeLutro's request 14, that as to this element the
25 defendant's own actions and own conduct and own state-

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2 ments must be considered.

3 THE COURT: Very well.

4 MS. OBERMAN: I have other matters.

5 THE COURT: Go ahead.

6 MS. OBERMAN: Your Honor, we also object to your

7 Honor's charge that when the government throws out the
8 net and that an occasional minnow may well go free, in
9 the context of this case, your Honor, most respectfully
10 it could convey an impression of big fish versus little
11 fish, and that, I think, was the ground for a motion for
12 the severance.

13 THE COURT: I get your point. What else?

14 MS. OBERMAN: On the example as to circumstantial
15 evidence --

16 THE COURT: You take exception to what I said
17 about circumstantial evidence. What else?

18 MS. OBERMAN: Your Honor, you charge that
19 a defendant who testifies in his own behalf may have
20 a motive to give false testimony and that the interest
21 of the defendant is like that possessed by no other
22 witness.

23 THE COURT: That is the law.

24 MS. OBERMAN: Most respectfully, your Honor,
25 we believe --

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2 THE COURT: You take exception?

3 MS. OBERMAN: Yes.

4 THE COURT: That is it.

5 MS. OBERMAN: And especially, your Honor, in light
6 of the instruction given as to the accomplice testimony,
7 that when you weigh one against the other, the defendant
8 comes off much the poorer, although the accomplice has an
9 equal motive to falsify.

10 THE COURT: Very well.

11 MS. OBERMAN: And we adopt also, of course,
12 the objections heretofore noted.

13 THE COURT: Anything else?

14 MR. BLOSSNER: Your Honor, the defendant
15 Soldano respectfully requests as to the model instructions
16 as to the identification testimony and as to photographic
17 identification, which I believe --

18 THE COURT: You take exception to that?

19 MR. BLOSSNER: Yes.

20 MR. HOFFMAN: Respectfully, your Honor, on behalf
21 of Mr. Lucas I except to the following --

22 THE COURT: Please don't make elaborate speeches
23 on this. Just mention the point, because it is now 7:30,
24 and I would like to have the jury on their way. I don't
25 want to cut anybody short. I don't want any expansion of

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2 a thought that I immediately get.

3 MR. HOFFMAN: I join in the previous exceptions.

4 I except to the charge concerning defendants not
5 taking the stand.

6 I except to the charge with regard to the statement
7 that the public is entitled to be assured that crimes of this
8 character cannot be committed with impunity.

9 I except to your Honor's statement of the fact
10 that when Mr. Lucas' house was searched, or words to that
11 effect, he was found with \$585,000 and drugs were found
12 in possession of Mr. Lucas. Specifically there
13 is no basis for that; there is no evidence of any drugs
14 found in Mr. Lucas' house or his possession.

15 THE COURT: Wait a minute? Did I say drugs
16 were found there?

17 MR. AMOROSA: I have no recollection of your
18 saying drugs, but Mr. Virella has some recollection of your
19 saying drugs. I thought you said money.

20 THE COURT: I said money and the envelopes, the
21 bags and the machine, sealing machine. I will tell the jury
22 if I said anything about drugs being in Mr. Lucas'
23 possession, that there were none. I will straighten it out
24 now.

25 MR. HOFFMAN: I would respectfully request

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2 that in straightening it out that you merely say if you
3 stated there were any drugs found there, that was a mis-
4 statement.

5 THE COURT: I want to tell them exactly what
6 I understand to be the evidence, and I intend to straighten
7 it out. I don't believe in playing around with a jury.

8 MR.HOFFMAN: I respectfully except.

9 THE COURT: What is it now, Mr. Epstein?

10 MR.EPSTEIN: Forgive me. I overlooked one
11 exception. I take exception to your Honor's accomplice
12 charge, to your Honor's instruction to the jury on how to
13 treat accomplice testimony. Your Honor should have
14 instructed them as in United States v. Padgent, as set forth
15 in my original request.

16 THE COURT: Is there anybody else who has an
17 exception or a request?

18 MR. AMOROSA: Judge, I think on behalf of the
19 government something should be said to the jury with respect
20 to the identification of the defendant Soldano. I don't
21 believe that your Honor said anything with respect to his
22 identification procedure in this case.

23 THE COURT: I don't see that that particular item
24 requires any degree of proof greater than any other
25 factual matter. Do you think it has to be established beyond

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2 a reasonable doubt?

3 MR. AMOROSA: Yes, sir, that is certainly the case.

4 THE COURT: What is it that you want? Is there
5 any portion of the request that you want me to give?

6 MR. AMOROSA: Yes.

7 THE COURT: What is it?

8 MR. AMOROSA: Does your Honor have the request
9 before him?

10 THE COURT: Just read it to me, sir.

11 MR. AMOROSA: Identification testimony is an
12 expression of belief or impression by the witness. It's
13 value depends on the opportunity on the opportunity of the
14 witness to observe the offender at the time of the offense
15 and to make a reliable identification later.

16 We believe that that should be told to the jury.

17 THE COURT: Very well, I will so charge.

18 What else is there?

19 MR. AMOROSA: That, in substance, need all be
20 said in our opinion.

21 THE COURT: Bring in the jury, marshal, please.

22 (Jury in box.)

23 THE COURT: Ladies and gentlemen of the jury:
24 There are one or two things I would like to add. It has
25 been called to my attention that through inadvertence

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1 I refer to drugs being found on the premises with the
2 \$585,000, at the home of Mr. Lucas. I was wrong if I said
3 so. I certainly did not intend to. What I undoubtedly
4 wanted to say was, No. 1, \$585,000 in cash; No. 2, the
5 material used for those bags, whatever you call that
6 material. You remember it was shown you. I have
7 forgotten the name of that kind of material. I know you
8 know what I am talking about. And that can of lactose.
9 And then, finally, that sealing machine, all of which was
10 introduced in evidence. And so please put that in the place
11 of what I said.
12

6 13 You remember that Mr. Blossner on behalf of the
14 defendant Soldano argued that the beginning and throughout
15 the trial, and certainly during summation, on the issue
16 relative to identification of his client. You remember that
17 he introduced into evidence that book of pictures, and
18 I neglected, or if I didn't neglect, I want to rectify the
19 omission of the following words with regard to that particular
20 defendant:

21 Identification testimony is an expression of
22 belief or impression by the witness. Its value depends on
23 the opportunity the witness had to observe the offender
24 at the time of the events and to make a reliable identifi-
25 cation later.

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Is that what the government consents to?

MR. AMOROSA: Yes, sir.

THE COURT: Very well.

Now, ladies and gentlemen, the marshal will take you to dinner. Take your time. I would like all of you, the 16 of you, to go to dinner, and then return here.

And the moment they return, Marshal, the 12 jurors are to go into the jury room to enter upon their deliberations. Then the alternates will be excused.

You understand what I am saying. I ask you to be good enough as alternates to go along with the jury, not talk about the case during dinner, and return. Why does the Judge say that? Well, these are practical things.

They happen once in a while. Suppose one of the jurors, God forbid, does not feel well. He comes back and is unable to carry on before the jury enters upon its

deliberations. I would like to relieve that juror and have one of the alternates take over. That is a very

selfish reason, but a very necessary one. I know of

no other reason, other than the pleasure of having you

with us as long as possible. That will permit me to

impose upon you. And so, will you please do that, unless

there is some great disadvantage, and I take it there is

none. I asked the clerk to find that out, and he

STIPULATION

It is herely stipulated and agreed to between counsel, that:

Anthony Soldano was present at 131 Mott Street, in the City State and County of New York, on March 13, 1975.

On that occassion, federal and city law enforcement authorities raided the premises in belief that a dice game was in progress.

That Mr. Soldano along with several other people, was given an appearance summons requesting his appearance on April 3, 1975, in the Criminal Court of the City of New York, on a charge of Loitering for purpose of gambling.

That, that charge was dismissed by the District Attorney of New York County upon Mr. Soldano's appearance at court.

That most of the photographs in defendant Soldano's exhibit "C" and specifically including Mr. Soldano's photograph, were taken at the time of the issuance of the summons.

That defendant Soldano's exhibit "C" was displayed to Anthony Versino after March 14th 1975.

That prior To July 10, 1975, the name "ANTHONY VISCONTI" appeared in place of the name "ANTHONY SOLDANO", in the present Indictment.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x
UNITED STATES OF AMERICA

-against-

ANTHONY SOLDANO,

Defendant.
----- -x

FILED
U.S. DISTRICT COURT
DEC 12 4 41 PM '75
S.D. OF N.Y.
5.00
2
NOTICE OF APPEAL

Ind. No. 75 CR 287

(IBC)

S I R S :

PLEASE TAKE NOTICE that the defendant, ANTHONY SOLDANO hereby appeals to the United States Court of Appeals for the Second Circuit, from the judgment of conviction rendered against him in this Court on the 3rd day of December, 1975. Defendant appeals from each and every part of said judgment of conviction and sentence thereon, as well as from the whole thereof, which was based upon a trial by jury before the HONORABLE IRVING BEN COOPER.

Dated: New York, New York
December 10, 1975

Yours, etc.

Robert Blossner
ROBERT BLOSSNER

Attorney for Defendant
Office & P.O. Address
250 Broadway
New York, New York 10007

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United States District Court

United States of America vs.

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

ANTHONY SOLDANO

DOCKET NO.

75 Cr. 687 (IBC)

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

ROBERT BLOSSNER, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, did distribute and possess with intent to distribute Schedule I narcotic drug controlled substances, to wit, heroin. (Title 21, Sections 812, 841(a)(1) and 841(b)(1)(A) U.S.C.; and (Title 18, Section 2, U.S.C.) and conspiracy so to do. (Title 21, Section 846, U.S.C.).

SENTENCE OR PROBATION ORDER

as charged in Cts. 1 & 9
The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on each of Counts 1 and 9 to run concurrently with each other.

The defendant is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, United States Code, Section 841, to commence upon expiration of confinement.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

COMMITMENT RECOMMENDATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

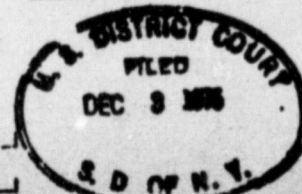
SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

IRVING BEN COOPER, U.S.D.J.

Date

12/3/75



MD 2-1

Mag

CHARGE OF THE COURT

THE COURT: I am Forelady, Ladies and Gentlemen of the Jury: I would be sadly remiss if I failed at the very outset of this, the Court's charge to the jury, to express to each one of you a keen satisfaction that comes to the Court and to counsel for the undivided attention that you have constantly demonstrated throughout the course of this trial.

It is evident that you have discharged your duty with fidelity. You have followed the testimony with intelligent understanding and absorbing interest. I am quite satisfied that no single matter relating to the factual issues has escaped your attention.

You have been silent throughout and when your turn comes to speak I have every confidence, and I am sure counsel on both sides join me in this, that in accordance with the solemnity of your oath and the high order of your conscience, you will pronounce the justice due in this case.

Your selection was the result of great care exercised by the Court and counsel. Your mission is not easy, and we are sure you did not expect it to be.

A distinguished philosopher, Albert Camus, a Nobel prize winner, summed it up for all of us -- for you,

1 MD T2-2

2 for the Judge, for counsel -- when he wrote that justice
3 dies from the moment it becomes a comfort, when it ceases
4 to be a burning reality, a demand upon one's self.

5 We are indebted to counsel, Mr. Amorosa and Mr.
6 Virella for the government, and, in alphabetical order, Mr.
7 Blossner, Mr. Chance, Mr. Epstein, Mr. Goldberg, Mr. Hoffman,
8 Mr. Lang, Mr. Edward Panzer, Mr. Joseph Panzer and his
9 associate Mrs. Oberman, for the defense, for their genuine
10 concern with the interests of their clients. In particular,
11 we are grateful for their demonstration that a day's work
12 well done is always a stimulating experience for participants
13 and listeners alike.

14 The lawyers are not on trial. They have acquitted
15 themselves with distinction. The evidence and the law
16 applicable to that evidence is what is before you, and you
17 will address yourselves exclusively to that. Whether you
18 like a lawyer or you don't like a lawyer, whether you like
19 the Judge or you don't like the Judge, hasn't a blessed thing
20 to do with your undertaking.

21 Let me say a word about objections that counsel
22 have interposed from time to time. Please understand that
23 counsel under our law not only have the right but it is
24 indeed their duty on the offer of certain evidence to press
25 whatever legal objections there may be to its admission.

1 T2-3

2 With those comments about counsel, we take leave
3 of them and we concern ourselves exclusively with the parties
4 involved in this controversy: the government, otherwise
5 known in the law as the plaintiff in this proceeding, and
6 each defendant on the other side.

7 This is not a contest in salesmanship, it isn't a
8 battle of wits, it isn't a clash of personalities; it is
9 by law pronounced to be a conscientious search for the
10 truth, and if you can leave this courthouse with the firm
11 conviction that your verdict is consistent with the truth,
12 then indeed your duty will have been done, because the only
13 triumph in any litigated case, whether it be civil or
14 criminal, is the triumph of the truth.

15 As I told you when you were being selected, every
16 defendant -- every defendant, regardless of his race, creed,
17 color, age, regardless of impediments of any kind -- is
18 entitled to a fair trial under our law, and the very same
19 legal propositions of law must be charged by the Court to the
20 jury regardless of who the defendant is, whether he is
21 successful or waiting for success, whether he is ignorant
22 or well informed, crude or polished, highly esteemed or
23 despised, whether he is a member of a good or bad family,
24 yes, even the avowed enemy of our society, each is entitled
25 to his day in court and let justice be done according to the

1 T2-4

2 facts and according to the law in the case. That is
3 America.

4 You do not sit here as barons of old, who we used
5 to read about as schoolchildren, the barons who assembled
6 and by whim, favor or caprice, by likes or dislikes, decided
7 who was going to be flung into jail and who went free and
8 who got the bag of gold or who was compelled to resign in
9 abject poverty.

10 You have no such power, any more than I have.
11 Your duty is to be the judges of the facts and apply the law
12 to the facts no matter who likes it or who doesn't like it,
13 and let the chips fall where they may. You are here to
14 determine the guilt or innocence of each of these
15 defendants separately.

16 Neither you nor I are here to please or favor
17 anyone. We have a sworn duty to perform and must discharge
18 it if justice is to prevail. After all, it is your justice,
19 your courthouse, for black, for white, for poor, for rich,
20 It is your burden as much as my burden, and you have got to
21 get exercised about the doing of justice as much as the
22 Judge.

23 We have reached the point where you are soon to
24 undertake your final function as jurors, and here you
25 perform one of the most sacred obligations and responsibilities

1 T2-5

2 of citizenship. You are, and make no mistake about it, the
3 ministers of justice, as the Supreme Court of the United
4 States has referred to you. You are to approach your duties
5 in an attitude of complete fairness, complete impartiality,
6 and to appraise the evidence calmly and deliberately, and,
7 as was emphasized by me when you were being selected, without
8 the slightest trace of sympathy, bias, or prejudice for or
9 against the government or the defendants who are the only
10 parties to this controversy.

11 What I have just said is as important a part of
12 this charge by the Court as any other part. Never forget
13 it for an instant, that you and you alone are the sole and
14 exclusive judges of the facts.

15 Its equivalent is found when it comes to law
16 where the Judge is the sole and exclusive judge of the
17 law. You heard counsel press various legal points before
18 me and when I disagreed you heard me take a definite
19 position. And if I agreed, I said so. You do likewise as
20 to the facts no matter who it suits.

21 I think I mentioned to you while you were being
22 selected -- and this, too, is a part of America -- that like
23 legions of others I have been on my own since I was ten, and
24 I have lived on both sides of the tracks. I have frozen
25 and gone hungry, and we were moving every month because we

1 HD2-6

2 couldn't pay the rent, and I went down to the railroad
3 tracks and with cupped hands, because we couldn't afford
4 gloves, in wintertime I picked up the pieces of coal that
5 fell from the passing railroad cars and brought those pieces
6 home to feed the potbellied stove.

7 Don't tell me what it means to go from rung to
8 rung, and the blessedness of this country in affording an
9 opportunity to those who want to climb, climb the legal way,
10 the approved way. And I learned from early days up to this
11 very moment something that many of us forget.

12 Let us be satisfied with the applause of our
13 own conscience. I don't want anybody bugling and bowing and
14 scraping before me. I want this little man up here to be
15 satisfied and approve of what I endeavor to do. And that I
16 have a right to insist upon from you, as the judges of the
17 facts, every bit as vital and every bit as important as
18 my function.

19 You didn't see me sit in a high position and look
20 down on you. Don't let anybody fool you. Your function
21 equals if not exceeds mine because you, not the Judge,
22 decide whether there were these conversations, whether there
23 was this participation, whether this took place or that
24 took place. I don't decide it; you decide it. That's the
25 reason you must be satisfied with the applause of your own

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ND2-7

consciences.

One of the greatest judges that ever sat in the Supreme Court, Mr. Justice Robert Jackson from New York -- and this is a part of the history of that Court -- I got to know him, and one of the greatest regrets of my life is that it didn't come to me to have the privilege of really knowing him more intimately -- he was a great judge. Why? Because he knew the books? No. He knew the books, but much more he knew human beings, he knew life. And as Justice Holmes commented once: "The life of the law is not logic, it is experience."

That was true of Mr. Justice Robert Jackson, who you remember was the prosecutor on behalf of the United States at the Nuremberg trial. Justice Jackson, who is no longer among the living, attended a meeting of attorneys and judges, and during the intermission a group of admiring lawyers gathered around him, and one of them spoke up and said, "Mr. Justice, what do you really expect of a judge?"

And without batting an eye, he said: "I expect him to do his utmost to call them as he sees them as they come across the plate, just the way that umpire is doing at that game going on right now over there."

And if that is true of a judge of the law, it is equally true of you, the judges of the facts. You call

1 MD 2-8.

2 them as you see them. We have a game going on right now.

3 One of the sacrifices of all of us was not to have been able

4 to be spectators on television. What does that game mean?

5 Would it mean that much to us if it weren't played on a clean

6 field? Not a physically clean field. If there was the

7 slightest bit of doubt as to the honesty of the play, and

8 the calling of the play, we would scream our heads off and

9 we would tear at it with our nails.

10 How much different is it here? It is the same.

11 If this is nothing more than an idle performance, well,

12 then, God help us all. It is a jungle, that's what it will

13 be, and that's what a lot would like to turn it into. I

14 think it is worthwhile, as American citizens, and especially

15 as we approach the two hundredth birthday, to reflect on

16 these points that are a part of the law in this case.

17 Just imagine where in the whole civilized world

18 will you find what I am about to recite? Only true in

19 America that when the government comes in, the United States

20 Government, with all its power, coming in on behalf of the

21 people of the United States, when it comes into a courtroom

22 our law is that it has no advantage whatever, it is just

23 another litigant, and it is actually called the plaintiff

24 in the law.

25 The powerful United States of America comes into

1 HD 2-9

2 court and starts the contest right at the same mark with
3 the defendant. How do you like that?

4 In every country of the world almost as soon as
5 a case is started the government is already on second base
6 before a word has been uttered. Those who tear at the
7 vitals of America, do they know that proposition of law,
8 do they know the bloody pages of history that it took to
9 bring this into being? We point with pride to it.

10 And so the fact that the United States Government
11 comes into this courtroom and levels a charge on behalf of
12 the people against each one of these eight defendants now
13 before us, the government starts just where each one of the
14 defendants starts. It has no advantage whatever, but it is
15 entitled to no less consideration than each of the
16 defendants.

17 Please bear in mind that every word of the
18 Court's charge applies to each defendant separately, for
19 the simple reason that I emphasized to you when you were
20 being selected, that guilt is personal. You must find each
21 defendant guilty or not guilty on each of the thirteen
22 counts that confront you, which I hope to develop, and which,
23 if you are patient with me, I shall make you understand so
24 well that you will be ready to undertake a written
25 examination. Otherwise I have failed, because you have to

1 MD 2-10

2 apply that law, not some of it but every bit of it, and it is
3 my obligation to get it across.

4 I can give you some mumbo-jumbo, too; I can give -
5 you some fancy language that those of you with your degrees
6 may be able to fathom upon a first reading, but what about
7 someone else on that jury equal to you who hasn't had any
8 formal training? And so it is my purpose to break these
9 propositions down so that each one of the twelve jurors
10 will know it backwards and forwards.

11 As you know, I just mentioned that there are
12 thirteen separate counts. What does that mean? There was
13 a day when if you charged thirteen separate crimes you would
14 have to have thirteen separate indictments. But in recent
15 years the lawmakers and the jawgivers have said, "Cut out
16 the nonsense. If you've got something to say against a man,
17 say it in one piece of paper, and say it in clear, simple
18 language, and not a lot of uncertainties. Let anybody with
19 an ordinary education read it and understand it."

20 And so each one of these thirteen counts against
21 these eight defendants on trial is a separate crime
22 charged, and each count, therefore, each charge, must be
23 weighed separately.

24 You look at the total evidence. You apply the
25 law to that evidence. Then you ask yourself, "On the basis

1
2 of all the evidence against this particular defendant
3 No. 1, am I satisfied of his guilt on the facts and
4 according to the law given us by the Judge?"

5 Regardless of whether two, three, four or
6 five defendants are guilty or innocent, you must weigh the
7 total trial record, all the evidence, against each one.

8 I use the expression "tote it up" -- t-o-t-e --
9 a good old English word meaning add it up. Add up every
10 piece of evidence against each one and ask yourself:
11 "Am I satisfied on those facts relating to that particular
12 defendant and on the law given us by the Judge applicable
13 to that total evidence against that particular defendant --
14 am I satisfied of his guilt beyond a reasonable doubt?"
15 Which I shall shortly define for you.

16 The law has said the jurors carefully selected
17 have the capacity to separate the totality of the evidence
18 and to apply the evidence as to its weight and apply it to
19 each defendant separately and distinctly. We say with great
20 pride, and we mean it, that all parties, government and
21 individuals alike, stand equal before the bar of justice.
22 Your final role is to decide the fact issues that are in
23 this case. You and only you, not the Judge, not counsel,
24 are the exclusive judges of the facts. You and you alone
25 pass upon the weight of the evidence. You and no one but

1 MD2-13

2 you determine the believability or the credibility of each
3 witness. You and no one but you resolve such conflicts
4 as there may be in the testimony of witnesses. And you
5 and only you, the jury, draw such reasonable inferences as
6 may be warranted by the evidence.

7 It is for you, the jury, yes, the jury only,
8 to make an independent, objective, detached assessment of
9 the total evidence. I venture the suggestion that with all
10 the sincerity in the world even the advocates on either side
11 of the table cannot do that completely, for the interests of
12 their respective clients are bound to rub off onto them,
13 even subconsciously.

14 So you see why the law names you, the jury, and
15 you alone, to pronounce the last word, so to speak, on what
16 the total trial record points to as the guilt or innocence
17 of each defendant on trial before you.

18 See how imperative it is that you take the law
19 exclusively from the Judge presiding. Without meaning to
20 mislead you many of counsel for the defense during summation
21 emphasized the point that the case presents no corroboration
22 of the testimony of Perna and Verzino. Some of the
23 attorneys actually used the words "no corroboration."

24 Well, under the law no corroboration is
25 necessary. To argue that the testimony of Perna and

MD 2-14

Verzino is unworthy of belief, and that there is no credible or believable evidence supportive of their testimony, is one thing, but to insist that there must be or should be supportive or corroborative testimony is to add a requirement not countenanced by law.

Or take this example. Counsel have emphasized the corruptability of Perna and Verzino, and well they might. However, you do not consider the testimony of Perna and Verzino in isolation or in vacuum, as it were. It is to be estimated, assessed, and evaluated in conjunction with all the other evidence in the case, including the testimony of the two defendants who took the stand.

The testimony of Perna and Verzino then is to be considered in conjunction with the entire trial record, all the evidence, all the other witnesses, all the stipulations -- and they are important, those stipulations, because they embody proof, evidence -- and all the exhibits, and each of the concessions made throughout the entire trial.

Here's another example. One or two attorneys during summation advanced the thought that the \$585,000, approximately, in cash found, along with drugs and other materials, in the presence of defendant Lucas, and received and marked in evidence, is not binding on any other

1 MD 2-15

2 defendant. It is not as easy as that. I shall develop
3 that later. But for the present let me comment if there
4 actually was a conspiracy, and you so find, and a defendant
5 before you other than Lucas was a willing and knowing member
6 of that particular conspiracy, and further you are convinced
7 that all the cash, or a part of it, and the other materials,
8 were under all the facts and circumstances related to the
9 objective of the conspiracy, that cash and the other
10 materials are as binding on that other defendant as though
11 they were actually found on him or in the premises occupied
12 by him.

13 After all, there is nothing unusual about the
14 end product of any illegal enterprise. The financial
15 return is the be all and end all of the undertaking. Even
16 when playing a game there comes a time when someone picks
17 up the marbles.

18 So that's the reason why you pay attention to the
19 law given to you by the Judge, not to well-meaning remarks
20 that might lead you astray. And I rush in to say there was
21 no such intent on the part of any counsel.

22 This may surprise you, but as a trial judge
23 in the United States District Court I have a perfect right
24 to comment on the evidence. That is unlike what you have
25 heard in the state court. I have the power, if I wish to

1 MD 2-16

2 use it. in any case, civil or criminal, to say to a jury,
3 after telling them what their powers are, that in my opinion
4 Witness X, who took the stand, was nothing but a corrupt
5 liar, and I wouldn't believe him on a stack of bibles from
6 the floor to the ceiling. All I need to do is add "But
7 you are not bound by my estimate; you are the judges of
8 the facts." "

9 Or I can say of another witness: "In my
10 opinion that witness spoke the gospel truth. But you, the
11 jury, are not bound by my estimate."

12 I can tell you how I feel about the facts.
13 I can comment on them openly, distinctly pointing out,
14 however, that you and you alone are the judges of the
15 facts.

16 I shall do no such thing, and I never have.
17 I don't believe that I should praise you, do you honor,
18 rise when you come in -- and why do I do that? As a sign
19 of respect for the enormity of the burden that you carry --
20 I don't believe that I should praise you, do you honor,
21 speak of you as the ministers of justice, and then invade the
22 orbit of your function. To me, that is talking out of both
23 sides of one's mouth. That is your responsibility and you
24 are going to have to meet it, and I have no doubt that you
25 will.

MD 2-17

1
2 What more can a judge say than what I told you
3 when you were being selected, that the fact-finding
4 function often proves more burdensome than laying down the
5 law. I know, for the greater part of my own life has been
6 spent as a fact finder.

7 Since I have the power to talk about the
8 evidence and even give you my evaluation of it, I
9 distinctly forbid you from reading into the tone of my voice
10 or the emphasis that I may apply here or there to a
11 proposition of law how the Judge feels about the facts.
12 If I wanted to tell you, I would tell you outright, since
13 I have a perfect right to do it.

14 I have long fought for the proposition that
15 if you've got something you believe in you go up the front
16 way, don't go sneaking around the back. So that if I wanted
17 to tell you my impression of some of the evidence, I'd
18 come right up the front way, because I've got the power to
19 do it. I don't have to resort to innuendo.

20 I want to rush in and say don't you dare try to
21 spell out how the Judge feels about any fact by the tone of
22 my voice or the way I move about. My function is to
23 instruct you as to the law, and it is your sworn duty --
24 you will remember I emphasized it while you were being
25 selected -- to apply the law as I state it to you in these

1 MD 2-18

2 instructions and apply it to the facts as you, the jury,
3 find them to be.

4 Your oath compels you to apply the law regardless
5 of your personal opinion as to the wisdom or the rightness
6 of any part of the law. I emphasized that when you were
7 being selected.

8 I speak very plainly when I tell you that your
9 oath compels you to apply the law as laid down in these
10 instructions. It is unthinkable that a jury would do
11 otherwise, for that would be the same as a lawyer violating
12 his oath, for which he could be disbarred, or a judge
13 violating his oath, for which he could be removed from
14 judicial office.

15 You must never forget that you sit here as
16 American ministers of justice compelled by your oath and
17 your conscience to determine the guilt or innocence of each
18 of these defendants based exclusively on the total trial
19 record before you.

20 What do we mean by the total trial record?
21 The sworn testimony, the exhibits, the stipulations entered
22 into by both sides and the instructions of the Court.

23 Now, with regard to any fact matter it is your
24 recollection and yours alone that governs, not what counsel
25 remember or anything that I may comment on. Anything that

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1
2 counsel either for the government or for the defense may have
3 said with respect to matters in evidence, whether during the
4 trial or in a question or in an argument or in summation,
5 is not to be substituted for your own recollection of the
6 evidence, and so anything that I may refer to, if my
7 recollection doesn't accord with yours, your recollection
8 prevails, your recollection is paramount.

9 Before we consider each charge against each
10 defendant and what is required to sustain each charge
11 against each defendant, there are certain preliminary
12 observations that are in order, certain principles of law
13 that are applicable to every criminal case, and to some of
14 which I referred at the time of your selection as
15 jurors.

16 Such is human nature that people apply the
17 term boilerplate to these fundamental principles of law
18 which have been hammered out by blood and sweat and are a
19 part, and a glorious part, of our country's judicial
20 history. They are not boilerplate to me. I have said them
21 hundreds of times, and on each occasion I regard myself
22 privileged to pronounce these sacred propositions of law.

23 One of them is that an indictment is merely an
24 accusation, a charge. It is a method by which persons
25 accused by a grand jury of crimes are brought into court,

1 MD 2-20

2 and their guilt or innocence is determined by a trial
3 jury, such as you are. It is no evidence whatever of guilt
4 of a defendant and you will not give any weight whatsoever
5 to the fact that an indictment has been returned against
6 these defendants.

7 Each defendant here has pleaded not guilty.
8 Each defendant had a right to plead not guilty and the
9 government under our law has the burden of proving guilt
10 beyond a reasonable doubt, which I shall shortly define, as
11 I shall other terms that I use.

12 We say under our law that the government has the
13 burden of proving each charge, each count, against each
14 defendant, and proving each count as to each defendant
15 beyond a reasonable doubt.

16 Now, when I say that, that doesn't mean to imply
17 that I think the government has not done so or that the
18 government has succeeded. I have got to lay down these
19 principles of law firmly, and you, the jury, apply those
20 propositions of law to the facts as you find them to be.
21 Remember, I take no position here on the facts.

22 After all, ladies and gentlemen of the jury,
23 what does the word "instructions" by the Judge mean? The
24 law says the Judge has to instruct you. Does it mean to give
25 you some phraseology and some legal terms which fall on your

MD 2-21

ears for the first time and leave you troubled and uncertain? Not at all. It means teach the jury, somehow convey to the jury the essence, the substance, the purport and the directive of each proposition of law applicable in the case.

Just contemplate the glory of our law when it comes to the presumption of innocence, which I mentioned with a great deal of emphasis while you were being selected. I told you that the burden is on the government to prove a person guilty and to prove that person guilty beyond a reasonable doubt, and that burden never shifts from the government to a defendant. The government has to bear that burden throughout the entire trial from beginning to end, from start to finish.

It is our law that a defendant doesn't have to prove his innocence. On the contrary, the defendant is presumed to be innocent of the accusation contained in the indictment. This goes back to the time when men were put on the rack and tormented and tortured and made to give utterances that condemned them to death. And so the very purport and the very sine of the Constitution of the United States in essence is this: That based on the history of mankind no man shall be made to testify against himself, no man shall have to prove his innocence. If you've got something against

1 MD 2-22

2 a man and you charge him, then you prove it, and prove it
3 beyond a reasonable doubt.

4 If that isn't the glory of a civilized world,
5 tell me what it is. The fact that it isn't upheld and
6 glorified and hammered by those who have the mission to
7 hammer it, and to make it a viable, everyday, tangible
8 concept translated into living performance is not my fault,
9 but that's the law.

10 And so each of these defendants is presumed to
11 be innocent of each of the charges. That is the law.

12 The government, of course, says the government
13 is well aware of that presumption. The government is saying
14 to us, in effect, that "We do not evade it, we say that what
15 we have offered as proof establishes the guilt without
16 in any way interfering with that tremendous advantage which
17 the law recognizes that each defendant has, to wit, the
18 presumption of innocence."

19 So, let's go back. It is a protective shield
20 which covers a defendant. And when I say a defendant I mean
21 each of these defendants, and each of the defendants in the
22 cases I had twenty years ago, and each of the defendants that
23 I will have as long as I draw a breath. And that presumption
24 is in favor of a defendant throughout the entire trial. It
25 is in favor of each of these defendants right now as I

1 MD 2-23

2 talk to you. This very moment our law says that shield of
3 presumption of innocence surrounds each defendant during the
4 course of the entire trial. It even continues to shield
5 him while you are deliberating.

6 It is removed, this presumption of innocence
7 of a defendant, this shield, only when you, the jurors,
8 declare that the guilt has been established beyond a reasonable
9 doubt. Then that protective shield has been pierced, it
10 falls away from the defendant and it no longer affords him
11 protection.

12 The presumption of innocence is sufficient to
13 acquit a defendant of the crime charged against him unless
14 it is overcome by evidence that satisfies your mind beyond
15 a reasonable doubt of his guilt, and unless you are so
16 satisfied it is your sworn duty to find the defendant not
17 guilty.

18 If, on the other hand, you do not have a
19 reasonable doubt as to his guilt it is your sworn obligation
20 to find the defendant guilty.

21 Now, let's go to reasonable doubt. There is
22 no mystery about it. An intelligent high school student
23 can capture its full essence. What does the law mean by
24 reasonable doubt? How much evidence does the government
25 have to place before a jury in any criminal case? Must it

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2 On the other hand, if after such a fair and
3 impartial consideration you can candidly and honestly say
4 that you are satisfied of the guilt of a defendant, that
5 you do have an abiding conviction of his guilt which amounts
6 to a moral certainty -- I mean such conviction or certainty
7 as you would be willing to act upon in important and weighty
8 matters in your own personal affairs in your own private
9 lives -- then you have no reasonable doubt, and in that
10 circumstance it is your sworn obligation to convict.

11 One final word on this subject of reasonable
12 doubt. Reasonable doubt does not mean a positive certainty
13 or beyond all possible doubt. This is not a mathematical
14 problem. You are dealing with human beings, the flesh, the
15 bone, the tissue. If the rule were you had to be satisfied
16 beyond all possible doubt few men, however guilty they might
17 be, would ever be convicted, for it is practically impossible
18 for a person to be absolutely and completely convinced of any
19 controverted fact which by its very nature is not susceptible
20 of mathematical certainty. And so, in consequence, the test
21 in a criminal case is that it is sufficient if the guilt of
22 the defendant is established beyond a reasonable doubt, not
23 beyond all possible doubt.

24 Let's take a bird's eye view of the indictment.
25 I will try to delineate essential parts of that at the

1 MD 2-26

2 appropriate times.

3 The indictment in this case contains seventeen
4 counts, as I told you. You will be asked in your
5 deliberations to consider only the following counts.
6 You will get a list of them, don't worry about it. It will
7 be all typed up for you.

8 One, the conspiracy count. That's the first
9 count, in which all of these defendants are named as
10 participants.

11 And then there are what we call substantive
12 counts: 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15 and 16.
13 Each of these counts charges a separate offense or crime,
14 and each must be considered separately.

15 The indictment names twenty defendants in all,
16 and five additional co-conspirators. Only eight defendants
17 are on trial before you. They are the only persons whose
18 guilt or innocence you must announce in your verdict, although
19 as I will explain to you shortly, in considering their guilt
20 or innocence you may have to determine the nature of the
21 participation, if any, of the other named defendants.

22 I repeat: In the determination of innocence or
23 guilt you must bear in mind that guilt is personal. The guilt
24 or innocence of a defendant on trial before you must be
25 determined separately with respect to him and solely on the

1 MD 2=27

2 evidence presented against him, or the lack of evidence.

3 The case of each defendant stands or falls upon
4 the proof or lack of proof of the charge against him,
5 and not against somebody else.

6 Now, what are all these charges? Reduced to its
7 simplest term, here's what it amounts to. I told you the
8 first count charges a conspiracy. It charges that all of
9 the defendants together and with others known and unknown
10 to the grand jury conspired to violate the narcotics law.
11 This is called a conspiracy count.

12 I'll tell you in a bit what we mean by a
13 conspiracy, what the law means. A word just now will help
14 you. It is a plan of two or more people to violate a
15 federal law. That is, in brief, what it amounts to.
16 "Let's get together and agree and become willing and
17 knowing members of an agreement between us to violate the
18 narcotics law." That's it. To do that alone is a
19 conspiracy, as I shall define conspiracy, and that's a
20 separate crime from going out and possessing the drugs.

21 "Let's get together and take stolen property
22 across state lines. What do you say?

23 "Okay."

24 There is a plan to commit a federal crime, which
25 is the illegal transportation of certain properties across

1 MD 2-28

2 state lines.

3 "Let's get together and avoid the payment of
4 a tax on beer.

5 "Okay, count me in."

6 If all the elements that I will define shortly
7 are present, if they are brought to the attention of the
8 jury by proof beyond a reasonable doubt, that alone is a
9 conspiracy. And if they go and transport that liquor or
10 that beer without tax, that's a separate crime.

11 Am I getting through a bit? Stay with me, and
12 I'll drive it home.

13 Now, the remaining counts are what we call
14 substantive counts.

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2 So these remaining counts are the substantive
3 counts. The conspiracy count here charges that they
4 got together to violate the federal law with regard to the
5 possession of drugs, and the substantive counts charge
6 that they did exactly that, that they did carry out the
7 objectives of the conspiracy, and that is, actually
8 possess with intent to distribute narcotic drugs.

9 So 1 charges the conspiracy, even though they
10 did not have a bit of drugs, and possession the forbidden
11 drug with intent, knowing, et cetera, et cetera, that is
12 a separate charge.

13 Do you get it, madam?

14 And so these substantive counts charge violations
15 of the federal narcotics law in that the defendants named in
16 each count are accused of distributing and possessing with
17 intent to distribute various amounts of heroin and cocaine.
18 I shall go into each count separately.

19 A conspiracy to commit a crime is an entirely
20 separate and different offense from the substantive crime which
21 is the objective of the conspiracy. The essence of the
22 crime of conspiracy is an agreement or undertaking to
23 violate other laws. So if a conspiracy exists, even
24 if it should fail of its purpose, it is still punishable
25 as a crime. Consequently, in a conspiracy charge there

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2 is no need to prove an actual violation of the narcotics
3 laws. Just getting together and planning it, that is a
4 crime.

5 Now, let's go right to it -- and bear with me
6 and see if I can't make this clear. A lot of people have
7 difficulty with conspiracy. And I think if you stay
8 with me we will bring it home to you. I have already
9 told you that the conspiracy count is distinct from the
10 charges made in the remaining counts. This fact, however,
11 does not preclude you from considering proof of an actual
12 violation as evidence that a conspiracy existed. Before
13 you may convict any of the defendants under this count,
14 the following essential elements must be established beyond
15 a reasonable doubt:

16 First: You must find the existence of the
17 conspiracy charged;

18 Second: You must find that the particular
19 defendant whose guilt or innocence you are considering
20 knowingly and wilfully associated himself with the
21 conspiracy; and, finally,

22 Third: You must find that one of the conspir-
23 ators committed at least one of the overt acts set forth
24 in the indictment at or about the time and place alleged.
25 I shall presently refer to the overt acts.

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2. If the government fails to establish each essential
3. element beyond a reasonable doubt, you must acquit the
4. defendant on this count; if it succeeds, your duty is to
5. convict him on this count.

6. Let me give you a crude example of an overt
7. act: A says to B, "I have decided I am going to rob
8. that bank down the street," and B says, "When are you going
9. to do it?"

10. And A said, "I don't know, but I am figuring
11. on doing it soon."

12. And B says, "What's wrong with me? Count me
13. in on it."

14. A says, "Okay. I don't know but what it is best
15. to do it in the evening; I don't know what hours, but
16. let's do it, okay."

17. So there you have, so far, a combination of
18. two persons, at least, planning to do an unlawful act, that
19. is, rob a bank, which is prohibited by federal law.
20. Further, you have both of them members of that conspiracy.

21. They don't write a letter to each other, go before a
22. Notary Public. All it takes is to have a meeting of the
23. minds. There is no contract with 500 provisions between
24. a gigantic corporation, A, and an international empire,

25. B. You go into a grocery store: "Give me a bottle

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2 of milk." That is all you say. He hands you a bottle of
3 milk and he gives you some money; he gives you change. Ther
4 is a complete transaction, a complete contract. You hardly
5 said anything. You might even say "Milk," and that is
6 all. There is a complete contract, a complete meeting of
7 the minds. You want to buy milk; he wants to sell it to
8 you. There it is. That is all it takes. It is the
9 same in a civil transaction as it is in a criminal, and
10 vice versa. But there must be proof, of course, beyond
11 a reasonable doubt that there was such a transaction.
12 I am just giving you this rough example and I am saying
13 that if the proof satisfies the jury beyond a reasonable
14 doubt, that would be a conspiracy, provided there was
15 proof on one other point.

16 Let me go back to that crude example of mine.
17 B on his own, without telling A about it -- remember, A
18 is the one who made the proposition in the first place --
19 B gets on the telephone with the bank, a perfectly innocent
20 call, apparently, but with the intent of furthering the
21 objective of the conspiracy, and he says, "What time do you
22 close on Thursday evening?" That is a step that was
23 taken by a member of the conspiracy which constitutes the
24 overt act which the law makes imperative, a step taken to
25 further the object of the conspiracy. It is as simple as

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that.

Suppose two or more persons agree amongst themselves to counterfeit money or to illegally transport alcohol or, as in the case before you, to distribute narcotics, and a single step is taken to further or advance the objective of the conspiracy, the crime of conspiracy has been committed. This is so even though the conspirators actually did not go so far as to actually counterfeit the money, or transport the alcohol, or distribute the narcotics.

If in addition to the conspiracy itself, the conspirators proceed to execute the conspiratorial plan by actually robbing a bank, or counterfeiting the money or transporting alcohol, and so forth, a separate crime is thereby committed, and that separate crime is what we call the substantive crime.

I don't care what you call it. The point is, that is a crime over and above the conspiratorial crime. So, one is the planning, which is a crime in and of itself, and two is another crime distinct and apart, and that is the carrying out of that plan.

The law is not the ass that people ascribe to it. It is full of human understanding. What is all this thundering about conspiracy? Why is it made a pro-

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hibitive act? Because Congress knows that when people get together to plan to commit or to violate a federal law, there is no end to it. Its ramifications, its tentacles are embedded deep in the very maw of the earth. And to those who do not know what "maw" is, it is a nice English word and that means the very bowels of the earth. And so the law says, "Look out. When you get together and start to plan anything which will be the beginning step of a series of other crimes, you are committing a crime by getting together."

You with the pleasant face, madam, am I getting to you?

And you, are you getting it, sir?

How about you, sir? Do I need press any further?

How about you, sir, are you getting it?

How about you, ma'am?

J.D.?

THE JUROR: Yes.

THE COURT: And you and you? How about you? are you getting it?

Thank you.

We will take a short recess.

(Recess.)

THE COURT: A conspiracy cannot exist without at

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2 least two persons, whereas the separate crime to carry out
3 the object of the conspiracy can be violated, of course, by
4 one person. Putting it more simply, it is a crime to
5 conspire or plan to commit a crime, and it is another
6 crime if the plan is carried out. I am going to repeat
7 it backwards and forwards, because my concern that you should
8 get it exceeds my own personal comfort. That is the way
9 it should be. I have no use for those who do not throw
10 themselves heart and soul into their mission, whether it
11 be an advocate or a judge or anyone connected with the
12 judicial system.

13 Because of its importance to the maintenance
14 of law and order, an explanation of an unlawful conspiracy
15 requires a word or two of background. Collective criminal
16 agreement, that is, partnership in crime, creates a
17 greater potential threat to the public than the lone
18 wrongdoer.

19 Remember the example I gave you of the ugly
20 creature with his tentacles. Once those tentacles
21 begin to spread, it takes time to lop off every one of
22 those tentacles. Those tentacles represent the substantive
23 acts that follow upon the completion of the conspiracy or
24 the carrying out of the conspiracy's objectives. So the
25 law says that is harder to detect, that combination,

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2 than the wrongdoing of the lone wrongdoer.

3 Concerted action for criminal purposes often,
4 if not normally, makes possible the attainment of ends more
5 complex than those which an individual acting alone could
6 accomplish. Group association increases the likelihood
7 and that the criminal objective will be successfully
8 realized and renders detection more difficult than the
9 instance of a sole aggressor.

10 It was because of these and other reasons that
11 Congress made a conspiracy or concerted action to violate
12 a federal law a crime entirely separate, distinct and
13 different from the substantive law which may be the object
14 of the conspiracy.

15 These defendants, therefore, are charged with
16 conspiracy, together and with others. What then, is the
17 legal language? I will give you simple examples, and then
18 I am going to give you the legal language.

19 In essence, it is a crime to conspire to plan to
20 violate a federal law. I repeat, there is no need here
21 to prove an actual violation of another federal law.
22 In other words, it is not necessary to show that the con-
23 spiracy succeeded. Two or more persons may agree to
24 violate a federal law. That alone constitutes, in essence,
25 the crime of conspiracy. If they actually violate the law

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2 they conspired to do, that constitutes another and separate
3 and distinct crime. In order to find the defendants
4 guilty on the conspiracy count, the government has the burden
5 of proving beyond a reasonable doubt the three elements
6 that I have already mentioned, and it must prove every
7 one of these three elements beyond a reasonable doubt.
8 Let me give them to you again:

9 The first element, that the conspiracy alleged
10 in the indictment existed, second, that the defendant,
11 and this applies to each one of them -- and you put the
12 test to each one -- that the defendant was a willing
13 and knowing member of that conspiracy. That, too,
14 must be proved beyond a reasonable doubt; and, thirdly,
15 that a step was taken to further or carry out the
16 objective of the conspiracy.

17 A conspiracy is a combination or agreement
18 of two or more persons by concerted action to
19 accomplish a criminal or unlawful purpose.

20 Now, there may be one of you who has not quite
21 got this, and that is enough to cause me to expend myself
22 gladly. It is my duty.

23 The gist of the crime is that unlawful agreement
24 or combination to violate the law. A conspiracy is sometimes
25 called a partnership in crime in which each member becomes

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2 the agent of every other member.

3 The law goes on to say, to establish a conspiracy
4 the government is not required to show that two or more
5 persons sat around a table and then entered into a solemn
6 pact orally or in writing stating that they had formed a
7 conspiracy to violate the law and setting forth the details
8 of the plan, the means by which the unlawful project was
9 to be carried out, or the part to be played by this one
10 or that one who are the conspirators. That is silly.
11 Your common sense will tell you that when men, in fact,
12 undertake to enter into a criminal conspiracy, much is left
13 to the unexpressed understanding. Conspirators do not
14 actually reduce their agreements to writing or acknowledge
15 them before a Notary Public, nor do they broadcast their
16 plans. From its very nature a conspiracy is almost
17 invariably secret in its origin and its execution.

18 It is sufficient if two or more persons in any
19 manner, through any contrivance, impliedly or tacitly, come
20 to a common understanding to violate the law.

21 Sometimes, as I gave you in the example of
22 robbing a bank, that requires only a few words. Express
23 language or specific words are not required to indicate
24 assent or attachment to a conspiracy.

25 In determining whether there has been an unlawful

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2 agreement, you may judge the acts or the conduct of the
3 conspirators which are done in an apparent attempt to
4 carry out a criminal purpose. The old adage, "Actions
5 speak louder than words," is certainly applicable here.
6 Thus, dealing with the first element which must be proven
7 beyond a reasonable doubt, that is, the existence of the
8 alleged conspiracy, you are not to dismember it and view
9 its separate parts, but you are to look at it as a whole,
10 consider all the evidence, from start to finish, all the
11 evidence which has been admitted with respect to the con-
12 duct, the acts, the declarations of each of the alleged
13 parties, and such inferences as may reasonably be
14 drawn from those circumstances.

15 If on the basis of the sum total of such evidence
16 and the reasonable inferences to be drawn from it, you
17 are convinced that the minds of at least two alleged
18 conspirators met in an understanding way, in an agreement
19 to seek to achieve the unlawful purpose I have already
20 pointed out to you, then this element of the offense is
21 established.

22 In this connection it is not necessary for the
23 government to prove the success of the conspiracy in order
24 to establish a violation of the conspiracy statute.
25 I repeat: Persons may be guilty as parties to a conspiracy

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2 even though the objectives they undertook to achieve
3 were never accomplished.

4 Usually the only evidence available is that
5 of disconnected acts on the part of the alleged conspirator,
6 which acts, however, when taken together in connection with
7 each other show a conspiracy or agreement to secure a
8 particular result as satisfactorily and as conclusively
9 as more direct proof.

10 If you find that the parties got together, then,
11 to accomplish something unlawful, then a conspiracy is
12 shown, even though you may find the individual conspirators
13 may have done acts in furtherance of the common unlawful
14 design apart from and unknown to the others, so long as
15 those acts were done to carry out the same objective
16 of the conspiracy. Not everyone does the same job. The
17 man on top does one kind of job, the fellow next to him
18 has a different kind of function to perform, and the fellow
19 way down at the bottom runs the errands, but each one of them,
20 if each one of them knows what the objective of the conspiracy
21 is and is a willing and knowing member thereof, he is bound
22 by the acts of everybody done in or outside of his presence,
23 if done in connection with the furtherance of the objectives
24 of the conspiracy.

25 As I told you during the course of the trial,

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2 and as I told you in that rough example where they were
3 talking about robbing a bank, with B getting on the telephone
4 unknown to A, A not knowing B made a telephone call, to
5 find out about the hours of the bank, the evening hours,
6 that is binding on A as though A made the call himself.

7 Not everyone does the same job. The man on the top
8 does one kind of job, the fellow next to him has a different
9 kind of function to perform, and the fellow way down at the
10 bottom in the example I gave you during the course of the
11 trial, runs the errands. But if each one of them knows
12 what the objective of the conspiracy is and is a willing
13 and knowing member thereof, he is bound by the acts of
14 everybody done in or outside of his presence, if done in
15 connection with the furtherance of the objectives of the
16 conspiracy. That is another way the law says, "If you
17 do it, mister, don't come in here crying you didn't know
18 that the other fellow went that far, or went in that
19 direction, or did this or that; you are bound by it whether
20 you knew it or not, as long as it was done in furtherance
21 of the very objective of the conspiracy that you, mister,
22 knew about and participated in, were a willing member of."

23 Then, finally, I tried to put it another way.

24 Each conspirator need not know of every act done in furtherance
25 of the conspiracy by the other co-conspirators in order to

8 In determining whether the charge of conspiracy
9 has been made out in this case, it is your task, and your
10 task alone, on this first element of the conspiracy to
11 judge the total picture of the asserted acts and conduct
12 of the alleged conspirators which are claimed to have
13 occurred for the purpose of forming and promoting the
14 criminal agreement and seeking the alleged criminal
15 objective.

23 And so, ladies and gentlemen of the jury, if you
24 conclude that the conspiracy as charged existed, you must
25 next decide whether the defendant -- and this applies to

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2 each defendant, remember -- was a member of that conspiracy.
3 That element, too, as I have pointed out already many
4 times, must be established beyond a reasonable doubt, as
5 I have defined reasonable doubt for you.

6 In short, whether or not a defendant was a member
7 of a conspiracy may be determined upon the reasonable
8 inferences to be drawn from all the evidence in the
9 case, including the evidence that you heard as to his
10 own actions, his own conduct, his own connection with the
11 acts and conduct of the other alleged co-conspirators.
12 Putting it more succinctly, the government must prove
13 that the defendant knowingly and wilfully joined the conspiracy
14 during the period of its operation with the intent and
15 purpose of furthering its objectives.

16 I want to caution you that mere association
17 with one or more conspirators does not make one a member
18 of a conspiracy. Mere presence at the scene of a crime
19 and knowledge that a crime is being committed are not
20 sufficient without more to establish that a defendant was
21 a participant in the conspiracy or aided and abetted the
22 crime. Likewise, mere presence at conspiratorial
23 discussions and knowledge of the existence of the conspiracy
24 are not sufficient by themselves and without more to
25 establish that a defendant was a member of the conspiracy.

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2 In other words, in order to convict, you must
3 find from the total trial record that he was a participant
4 in the conspiracy, and not merely a knowing spectator.
5 You must focus upon the defendant's relationship to the
6 crime, and not solely upon his relationship with others
7 accused of committing the crime. His relationship to the
8 crime must be sufficiently substantial to satisfy the
9 concept of personal guilt.

10 What is necessary is that the defendant participate
11 with knowledge of at least some of the purposes of the
12 conspiracy and with intent to aid in the accomplishment
13 of those unlawful ends. Now, that does not necessarily
14 mean that he has to do what we call spade work. He can
15 get on the telephone, make a couple of calls, and he is
16 as much a member of the conspiracy as the fellow who is
17 doing something every other minute in connection with the
18 furtherance of the conspiracy, so long as the defendant
19 in making that telephone call, or whatever other simple
20 thing he may have done, was a member, a knowing member,
21 a willing and knowing member of the conspiracy.

22 A defendant may not know all of the conspirators.
23 yet if he knows there is a conspiracy and if he has knowl-
24 edge of its basic common objectives and aims and joins it,
25 then he adopts as his own the past and future words and

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2 acts of all the other conspirators in furtherance of the
3 conspiracy, as he understands it, even though he may not have
4 been present when the words were said or the acts were
5 done.

6 A person becomes a member of a conspiracy by
7 associating himself, however informally, with the common
8 plan or scheme, knowing the central aim or principal
9 purpose of the overall plan or scheme and intending to
10 aid in some way, even a minor way, to bring out the
11 success of the plan or scheme, and hence it comes about
12 that you have the captains and the lieutenants and the
13 fellow on the lowest rung of the ladder. I don't think
14 I need to expand upon it every time there is a conspiracy
15 involving such personages, the captain does not call in
16 the little fellow and tell him all the details of each
17 step that is going to be taken. The test is whether
18 each one of them knows the aims of the conspiracy and
19 participates therein to some extent.

20 And so, the basic question is, what was the scope
21 of and nature of the agreement as the defendants saw it?
22 What persons and what kinds of activities did he have a
23 good reason to believe were involved in furtherance of
24 the aim of the conspiracy? Knowledge is a matter of
25 inference from the facts proved. It is not necessary that

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a defendant be fully informed as to the details of the scope of the conspiracy in order to justify an inference of knowledge on his part. To have guilty knowledge, a defendant need not know the full extent of the conspiracy and all of its activities and actors. However, there is need to find, and find beyond a reasonable doubt, that a defendant charged with a conspiracy had knowledge of the general illicit purpose of violating federal law.

Accordingly, to find a defendant before you guilty under the conspiracy count, you must find that he entered into the conspiracy with specific criminal intent and knowledge. The only way you have of answering or arriving at the state of mind of a defendant in the case before you is to take into consideration all the facts and circumstances shown by the total evidence.

I repeat, direct proof here with regard to wilful or wrongful intent or knowledge is not necessary. They may be inferred from acts or a combination of acts. These are questions of fact to be determined from all the circumstances by you, and you alone.

I repeat, a conspirator need not know all the members of the conspiracy. A conspiracy and a defendant's participation therein may be inferred from such facts and circumstances in evidence as logically tend to sustain that

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inference. The independent evidence of illicit association in a conspiracy may be totally circumstantial. To find any defendant guilty of conspiracy, you must find that he knowingly and intentionally participated therein. This means that a party acted deliberately and with knowledge and purposely participated therein, intending to violate the law, rather than through inadvertence, mistake or negligence.

In determining whether or not a defendant, or any other person was a party to or member of such a common plan, the jury are not to consider what others may have said or done. That is to say, the membership of a defendant, or any other person, in such a common plan must be established by evidence as to his own conduct -- that is, what he himself knowingly said or did.

If and when it appears from the evidence, direct or circumstantial, in the case that such a common plan did exist, and that the defendant was one of the members of the plan, then the acts and statements by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the acts and statements may have occurred in the absence and without the knowledge of the defendant, provided such acts and statements were knowingly done and made during the continuance of the common plan or conspiracy, and in furtherance of some intended object or purpose of the plan.

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2 Otherwise, any statement or admission made or
3 act done by one person, outside of court, may not be
4 considered as evidence against any person who was not
5 present and did not see the act done, or hear the statement
6 made.

7 To sum it up, the government must establish
8 beyond a reasonable doubt that a defendant, aware of its
9 purposes and objects, entered into the conspiracy with a
10 specific criminal intent, that is, that a defendant knowingly
11 did an act which the law forbids, purposely intending to
12 violate the law.

13 Should you find that a conspiracy existed and
14 that based on proof of its actual participation therein
15 a defendant was a member, and that is established beyond
16 a reasonable doubt then the acts and declarations -- and I
17 know this sounds repetitious -- then the acts and
18 declarations of any other person you may find was also a
19 member of the conspiracy made during its pendency and in
20 furtherance of its objectives are considered to be acts of
21 all the current members, even though they were not pre-
22 sent.

23 This is so because when persons enter into
24 a conspiracy to accomplish an unlawful end they become
25 responsible for one another in carrying out the conspir-

1 mdr 2

2 acy and thereafter the acts and declarations of others whom
3 you find to be members of that same conspiracy may be
4 considered against the defendant if you find the defendant
5 to be a member of the conspiracy when those acts or
6 declarations occurred, and if those acts are done and
7 declarations made in furtherance of that very same conspiracy.

8 We come now to the law on overt acts.

9 I gave you the simple example, that rough
10 example, of a telephone call made, what hour does the bank
11 close in the evening? That is an overt act made in order
12 to carry out or further the objective of that conspiracy
13 between A and B to rob the bank.

14 And so we come to a more detailed enlargement.
15 Of what the law means by overt acts. That is the third
16 element of the conspiracy count that you must consider, and
17 that must be established beyond a reasonable doubt, as I
18 defined reasonable doubt for you, like each element, and
19 that is whether an overt act took place.

20 The offense of conspiracy is complete only when the
21 unlawful agreement is made and any single overt act to
22 effect the object of the conspiracy is thereafter com-
23 mitted by at least one of the conspirators.

24 What is the overt act? I have already indicated
25 to you it is any step or any action or conduct, even innocent

1 mdr 3

2 on its face, like a telephone call, which is taken to
3 achieve, accomplish or further the objective of the conspiracy.
4

5 The purpose of requiring proof of one overt
6 act is another example of the understanding of the
7 legislators of human behavior. Why do they insist that
8 there should be an overt act in order to complete the crime,
9 and without the overt act proven beyond a reasonable
10 doubt a defendant must be acquitted?

11 For the simple reason that the overt act shows
12 the intent to go forward with the plan, that they didn't
13 abandon it, that A and B didn't talk about robbing the
14 bank and then said "Oh, let it go."

15 But when one takes a step that shows that they were
16 determined to go forward, that the plan was not abandoned,
17 that it was being translated into tangible overt action.

18 The purpose of requiring proof of one overt act
19 is that while parties might conspire and agree to violate
20 the law they may change their minds and do nothing to
21 carry it into effect, in which event it will not constitute
22 an offense.

23 The overt act need be neither a criminal act nor
24 the very crime which is the object of the conspiracy.
25 It need not be committed by the particular defendant

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2 under consideration.

3 Let me read you an example of an overt act.
4 They are all in the indictment and you are going to
5 get them. They are on three legal sheets among 24 in
6 number, and I don't propose to read them except to give you
7 an example here and there.

8 "One: In or about February 1973 defendant
9 Ernest Malizia met co-conspirator Mario Perna at the Ever-
10 green Bar at 490 Fifth Avenue, Brooklyn, New York, and had a
11 conversation.

12 "Two: In or about February 1973 defendants
13 Ernest Malizia and Frank Pallatta, also known as 'Bolot',
14 also known as 'Nose', met in the Bronx, New York, and
15 rode in an automobile.

16 "3. In or about March 1973 Defendant Frank
17 Pallatta, also known as 'Bolot', also known as 'Nose',
18 met defendant Ernest Malizia and co-conspirator Mario Perna
19 at the Raceway Diner in Yonkers, New York, and discussed
20 narcotics."

21 Those are the alleged overt acts. I repeat: Some
22 of them are perfectly innocent on their face, but the
23 government must under the law allege some, but not all,
24 of what it contends are the overt acts.

25 You see, I repeat again, that parties may conspire

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1
2 and agree to do an unlawful thing, and they may change
3 their minds and not go through with it and drop it and pull
4 out of it right away, and so the law says when you do an
5 overt act, however, in furtherance of it, that shows you were
6 in it, to use the vernacular, you had not abandoned it,
7 you undertook to fulfil its object.

8 The prosecution under our law, is not required
9 to set forth in the indictment each and every act on which
10 it relies to establish the conspiracy or the defendants'
11 participation therein, nor is it required to prove each
12 overt act which may have occurred during the furtherance
13 of the conspiracy. It is required to prove at least one
14 such act did take place. The overt act or step essential
15 to sustain a conspiracy need not implicate all the
16 conspirators nor is it required that each of the conspirators
17 participate in or commit that particular overt act. It is
18 sufficient that such overt act was performed by any one or
19 some of the conspirators. This is so since the act of one
20 conspirator, as I have already pointed out, done in
21 furtherance of the conspiracy, becomes the act of all the
22 conspirators.

23 The guilt of a conspirator is not measured
24 by the extent or the duration of the participation in the
25 conspiracy, nor is it necessary that he received a

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1 pecuniary benefit for his participation. That is the
2 law. If a defendant participated in the conspiracy
3 to a more limited degree than others, or if he received
4 less benefit than others, he is equally culpable so long
5 as he was in fact a conspirator.
6

7 As alleged in the indictment, the conspiracy
8 commenced on or about January 1, 1973, and continued until
9 on or about July 10, 1975. It is the law that the govern-
10 ment need not prove that the conspiracy existed over the
11 whole course of time which is alleged in the indictment; the
12 duration of a conspiracy may be very short, it may be very
13 long, it may last even for many years, or during parts of
14 each year.

15 You must bear in mind that once formed a par-
16 ticular conspiracy must retain throughout its existence
17 the same basic agreement and the same objective present
18 when the conspiracy started. It must be the same conspir-
19 acy, not some other conspiracy.

20 If you don't find such a single overall conspir-
21 acy, the government will have failed to establish the
22 single overall conspiracy as charged in Count 1.

23 If you find that within that period all the
24 elements of this crime have been demonstrated to your
25 satisfaction beyond a reasonable doubt, as I have defined

1 mabr 7

2 reasonable doubt for you, then that crime becomes complete.

3 Having endeavored to drive home the significance
4 of these propositions of law which you must -- not may --
5 must follow and apply, let me read you -- because now you
6 have the meaning now these words will mean something to
7 you, I hope, I feel confident -- the exact language of
8 Count 1 in the indictment.

9 The grand jury charges from on or about the
10 1st day of January 1973 and continuously thereafter up to
11 and including the date of the filing of this indictment in the
12 Southern District of New York Joseph Magnano, also known as
13 Joe the Grind, Frank Pallatta, also known as Bolot, also
14 known as Nose, Firhard Bolella, Louis Macchiarola, also
15 known as Red Hot, Michael Carbone, Dominic Tufaro, also known
16 as Donnie Boy, Frank Ferraro, also known as Skooch, Carmine
17 Margiasso, also known as Charlie, Anthony DeLutro, also
18 known as Tony West, Anthony Soldano, also known as Tony,
19 Joseph Malizia, also known as Patsy Pontiac, Ernest
20 Malizia, John Gwynn, William Chapman, also known as Chappy,
21 St. Julian Harrison, Frank Lucas, Gerard Cachoian, also
22 known as Coco, Roberto Rivera, and Gabriel Rodriguez,
23 also known as Cass, also known as Cassanova, the defendants,
24 and Frank Caravella, Alex Pulphus, Joseph Condella,
25 Jose Ramos, Mario Perna and Anthony Verzino, named herein as

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2 co-conspirators, but not as defendants, and others
3 to the grand jury unknown, unlawfully, wilfully, and
4 knowingly combined, conspired, confederated, and agreed to-
5 gether and with each other to violate Sections
6 so and so and so and so -- and those are the sections dealing
7 with the illegal possession of prohibited narcotic
8 substances.

9 The conspiracy goes on.

10 Two: It was part of said conspiracy that the
11 said defendants unlawfully, wilfully, and knowingly, would
12 distribute and possess with intent to distribute Schedule 1
13 and 2 narcotic drug controlled substances, the exact amount
14 thereof being to the grand jury unknown, in violation of
15 Congressional Act No. such and such and such and such.

16 I have a feeling of contentment that this reading
17 falls upon understanding ears.

18 And then is set forth the overt acts in three
19 full pages.

20 Let me take up the subject of multiple conspiracy.
21 Some of the defendants have contended that the government's
22 proof fails to show the existence of the one overall conspir-
23 acy which this indictment charges. They argue that no
24 conspiracy existed, or if in fact one did exist then at
25 best the evidence shows several separate and independent

1 mabr 9

2 conspiracies involving various groups of the defendants.

3 Proof of several separate conspiracies is not
4 proof of the single overall conspiracy charged in the
5 indictment unless one of the several conspiracies proved
6 is the single conspiracy which the indictment charges.

7 So what you must first do is determine whether the
8 conspiracy charged in the indictment existed between two
9 or more conspirators. If you find no such conspiracy
10 existed then you acquit. However, if you are satisfied
11 that such a conspiracy existed you must determine who the
12 members were of that conspiracy. If you find that a par-
13 ticular defendant is a member of another conspiracy, not
14 the one charged in the indictment, you must acquit that
15 defendant.

16 In other words, to find a defendant guilty you
17 must find that he was a member of the very conspiracy
18 charged in the indictment and not in some other conspiracy.

19 In determining whether a given conspiracy
20 exists you may consider what the evidence shows
21 as to the changes of personnel and activity. You may
22 find a single conspiracy even though there were changes
23 in personnel or activities, provided you find that some
24 of the conspirators continued throughout the life of the
25 conspiracy and that the purposes of the conspiracy contin-

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1 mdr 10

2 ued to be those charged in the indictment.

3 The fact that the parties are not always
4 identical does not mean that there are separate con-
5 spiracies. In other words, if at all times the alleged
6 conspiracy had the same overall primary purpose and the same
7 nucleus of participants the conspiracy would be the same
8 basic scheme even though in the course of its operation
9 additional conspirators joined in and performed additional
10 functions to carry out the scheme while others were not
11 active or had terminated their relationship.

12 If you decide that the conspiracy charged
13 in the indictment existed between any of the defendants you must
14 then decide as to each defendant individually whether he
15 joined the conspiracy with knowledge of any of its
16 purposes.

17 In determining whether any defendant was a
18 party each is entitled to individual consideration
19 of the proof respecting him, including any evidence of
20 his knowledge or lack of knowledge, his status as a partner,
21 or supervisor, his participation in key conversations,
22 his participation in the plan, scheme, or agreements
23 alleged.

24 Does that come through?

25 The law on conspiracy is clear, but a conspiracy

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itself is an unusual, unique and characteristically exceptional type of offense. In spreading a net to catch the participants the main operatives as well as the so-called little guy may be scooped up. The evidence as to some, including the big and little, may meet the test warranting conviction, while the test as to others may be insufficient. The big as well as the little may escape altogether from the net. The net may hold the small but not the big, or the big and not the small, or some of both.

As the United States Court of Appeals observed "When the government throws out its big conspiracy net to catch the big fish in the criminal sea it has to be aware that an occasional minnow may wriggle free."

We now come to consideration of the law respecting the substantive counts. My burden to convince you with regard to each proposition of law remains the same until the last word, but I think I can say that the heaviest part of the total charge is behind us.

Let me read you the indictment as it relates to the substantive counts -- that means the counts other than the conspiracy count.

The second count -- and I will read you the pertinent language -- the grand jury further charges in or about March 1973 in the Southern District of New York

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2 Joseph Maganano, also known as Joe the Grind, Frank Pallatta,
3 also known as Bolot, also known as Nose, Richard Bolella,
4 Louis Macchiarola also known as Red Hot, Michael Carbone,
5 Dominic Tufaro also known as Donnie Boy, Frank Ferraro also
6 known as Skooch and Carmine Margiasso also known as Charlie,
7 the defendants, unlawfully -- here it is -- this is the
8 language, repeated over and over again, in the substantive
9 counts -- unlawfully, wilfully, and knowingly did distribute
10 and possess with intent to distribute a Schedule 1
11 narcotic drug controlled substance, to wit, approximately
12 2 kilograms of heroin.

13 The third count: The grand jury further
14 charges: In or about March 1973 in the Southern District
15 of New York, Joseph Maganano, also known as Joe the
16 Grind, Frank Pallatta, also known as Bolot, also known
17 as Nose, Richard Bolella, Louis Macchiarola also known
18 as Red Hot, Michael Carbone, Dominic Tufaro, also known
19 as Donnie Boy, Frank Ferraro also known as Skooch and
20 Carmine Margiasso also known as Charlie, the
21 defendants -- here again -- unlawfully, wilfully and
22 knowingly did distribute and possess with intent to
23 distribute a Schedule 1 narcotic drug controlled
24 substance, to wit, approximately 4 kilograms of
25 heroin.

1
2 The fourth count.

3 The grand jury further charges:

4 In or about November 1973 in the Southern District
5 of New York, Joseph Magnano also known as Joe the Grind,
6 Frank Pallatta, also known as Bolot, also known as Nise,
7 Richard Bolella, Louis Marchiarola also known as Red Hot,
8 Michael Carbone, Dominic Tufaro also known as Donnie Boy,
9 Frank Ferrar also known as Skooch and Carmine Margiasso
10 also known as Charlie, the defendants, unlawfully, wilfully
11 and knowingly did distribute and possess with intent
12 to distribute a Schedule 1 narcotic drug.

13 What is it this time? How much? The charge is
14 12 kilograms of heroin.

15 The fifth Count:

16 The grand jury further charges:

17 In or about March 1973 in the Southern District
18 of New York, St. Julian Harrison and Frank Lucas the
19 defendants, unlawfully, wilfully and knowingly did
20 possess with intent to distribute a Schedule 1 narcotic
21 drug controlled substance, to wit, approximately
22 3 kilograms of heroin..

23 The sixth Count:

24 The grand jury further charges:

25 In or about October 1973 in the Southern District

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1 mdr 14

2 of New York, Frank Lucas the defendant, unlawfully,
3 wilfully and knowingly did possess with intent to dis-
4 tribute Schedule 1 and 2 narcotic drug controlled substnaces,
5 to wit, approximately 4 kilograms of heroin and 2 kilograms
6 of cocaine.

7 The seventh Count:

8 The grand jury further charges:

9 On or about the 1st day of December 1973 in
10 the Southern District of New York, Frank Lucas the
11 defendant, unlawfully, wilfully and knowingly did possess
12 with intent to distribute a Schedule 1 narcotic drug
13 controlled substance, to wit, approximately 10 kilograms
14 of heroin.

15 The eighth Count:

16 The grand jury further charges:

17 In or about November 1973 in the Southern
18 District of New York, Anthony DeLutro also known as
19 Tony West, the defendant, unlawfully, wilfully and knowingly
20 did distribute and possess with intent to distribute
21 a Schedule 1 narcotic drug controlled substance, to wit,
22 approximately 5 kilograms of heroin.

23 The ninth Count:

24 The grand jury further charges:

25 In or about January, 1974 in the Southern

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2 District of New York, defendants Anthony Soldano also
3 known as Tony, and Joseph Malizia also known as Patsy
4 Pontiac, the defendants, unlawfully, wilfully and
5 knowingly did distribute and possess with intent to
6 distribute a Schedule 1 narcotic drug controlled substance,
7 to wit, approximately 3 kilograms of heroin.

8 The tenth Count:

9 The grand jury further charges:

10 In or about March, 1973 in the Southern District
11 of New York, Johnny Gwynn the defendant, unlawfully,
12 wilfully and knowingly did possess with intent to distribute
13 a Schedule 1 narcotic drug controlled substance, to wit,
14 approximately one-quarter kilogram of heroin.

15 Now we go to 14, the fourteenth count.

16 The grand jury further charges:

17 On or about October 30, 1973, in the Southern
18 District of New York, the defendant, John Gwynn, unlawfully,
19 wilfully and knowingly did distribute and possess with
20 intent to distribute a Schedule 2 narcotic drug controlled
21 substance, to wit, 159.5 grams of cocaine.

22 The fifteenth Count:

23 The grand jury further charges:

24 On or about the 20th day of December 1973 in
25 the Southern District of New York, John Gwynn, the defendant,

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1 16

2 unlawfully, wilfully and knowingly did distribute and
3 possess with intent, to distribute a Schedule 2 narcotic
4 drug controlled substance, to wit, 151.5 grams of cocaine.

5 The sixteenth Count:

6 The grand jury further charges:

7 On or about the 15th day of January, 1974,
8 in the Southern District of New York, John Gwynn, the
9 defnedant, unlawfully, wilfully and knowingly did distribute
10 and possess with intent to distribute a Schedule 1 narcotic
11 drug controlled substance, to wit, 148.5 grams of heroin.

12 Why don't I say to you, here it is, here is
13 the indictment, take it, take it into the jury room.
14 You can have it any way, whether I say it or not you go and
15 read it for yourself. Because that would be a way of
16 shoving on to you the burden that is unwarranted.
17 You have enough of a burden.

18 What is the statute with regard to substantive
19 acts? Having read you the language of the indictment
20 repeated over and over and over again you have have seen
21 how the indictment follows the statute, the Congressional
22 Act. The statute which the defendants are alleged
23 to have violated in addition to the conspiracy statute, here
24 it is, in pertinent part:

25 "It shall be unlawful for any person knowingly

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A2/0

1
2 or intentionally to distribute or ... to ... possess with
3 intent to distribute a controlled substance..."

4 Simple, right to the point. There it is.

5 Mr. Man, woman, you do that, you violate that law.
6 It says that it shall be unlawful for any person knowingly
7 or intentionally to distribute or to possess with intent
8 to distribute a controlled substance.

9 Now, what must the government prove beyond a
10 reasonable doubt in order to sustain a charge such as I have
11 read you in each one of those counts?

12 I told you what the government had to prove
13 beyond a reasonable doubt in order to establish a con-
14 spiracy. Now let me tell you what the government must
15 establish beyond a reasonable doubt in order to establish
16 the crime of the substantive count. Of course what I say
17 as to one applies to each one of the counts.

18 What must the government prove?

19 Before you can find the named defendants guilty
20 of the crimes charged in these counts of the indictment you
21 must be convinced beyond a reasonable doubt that the govern-
22 ment has proved the following elements:

23 One: That on or about the dates set forth in each
24 count the defendant or defendants named in that count
25 distributed or possessed with intent to distribute

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1 mdb 18

2 a narcotic controlled substance.

3 The second element that must be proved beyond
4 a reasonable doubt: That they do so unlawfully, wilfully
5 and knowingly.

6 The third element that must be established
7 beyond a reasonable doubt is that the substance which the
8 defendant or defendants named in the count possessed was
9 in fact a narcotic drug controlled substance.

10 I will say a few further words on these elements
11 in just a moment. I don't think you are going to have
12 much trouble, of course, with the third element. There
13 were stipulations with regard to that, but nevertheless
14 yours is the obligation to resolve that third element as
15 well as the first and second.

16 Let us take up the first element. You will
17 note that the first element of the offense is "Distribution
18 of the drug or possession with intent to distribute
19 the drug."

20 What does that phrase mean? The word
21 "distribute" means the actual constructive or attempt to
22 transfer of the drug. The word possess has its common
23 every day meaning, that is to have something within your
24 control. It does not necessarily mean to have it
25 in your hand or pocket. Control may be demonstrated

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by the existence of a working relationship between the person having such control and the person with actual physical custody.

15 people rob a house and take a diamond and one of them holds the diamond. Does that mean that the other 14 haven't actually possession of it, that they don't also hold it in their hand? See how stupid that would be.

And that word "intent" refers to a person's state of mind, and so the term "possess with intent to distribute" can be fairly stated to mean to control an item with the state of mind or purpose to transfer that item.

On this element the government contends that it has proved beyond a reasonable doubt that the defendants knowingly transferred the drug and possessed the drug and that at the time they possessed it their mental state was such that they would transfer it to someone else.

If you find beyond a reasonable doubt that such transfers were made I charge you that each such transfer satisfies this requirement of the statute.

Now, let us go to the second element that must be established beyond a reasonable doubt. The terms "unlawfully, wilfully and knowingly" mean that you must be

1 mabr 20

2 satisfied beyond a reasonable doubt that the defendants
3 knew what they were doing and they did it deliberately and
4 voluntarily as opposed to mistakenly or accidentally or
5 as a result of some coercion.

6 Of course, it is not necessary that the de-
7 fendants knew they were violating any particular law. Rather,
8 it is sufficient if you are convinced beyond a reasonable
9 doubt that they were aware of the general, unlawful nature
10 of their acts.

11 Now, let us go to the third element which must
12 be proved beyond a reasonable doubt, that the narcotic
13 drug controlled substance is either heroin or cocaine.
14 I instruct you as a matter of law that heroin and cocaine
15 are narcotic drug controlled substances mentioned in the
16 prohibited act enacted by Congress and made a law.

17 You, however, must still find beyond a reason-
18 able doubt that the substance is heroin, or cocaine as
19 charged in the specific count.

20 As I have previously instructed you it is not
21 necessary in order for the government to prove its
22 case of conspiracy to violate the narcotic laws that there
23 be proof of actual dealings in narcotics. All that need be
24 proved is that unlawful agreement and an overt act com-
25 mitted in pursuance of the agreement. The conspiracy

1 mdbl 21

2 is a crime in and of itself separate and apart from the
3 crime of importation, purchase, sale, and transportation
4 of narcotics.

5 I can hear you almost say "If you say that again
6 I am going to scream, Judge."

7 I hope that's the last time. The rule is
8 otherwise, however, with regard to the substantive vio-
9 lations of the narcotics laws, about which I am now
10 instructing you. Here you must be convinced beyond
11 a reasonable doubt that the substance possessed or
12 distributed was in fact a narcotic drug.

13 It is not necessary that that be proved by
14 direct evidence. Just as with any other component of the
15 crime, the existence of and dealing with narcotics may
16 be proved by circumstantial evidence. There need be no
17 sample placed before you, nor need there be testimony by
18 qualified chemists, as long as the evidence furnishes
19 ground for inferring that the material in question is
20 narcotics.

21 There are several categories of circumstantial
22 evidence which you may consider as to whether a given defend-
23 ant has possession of the narcotic drug as charged in each
24 substantive count. One, the testimony that someone had
25 personally tested samples of the powder from each shipment.

1 mdr 22

2 Two, the secrecy and deviousness with which the transactions
3 were handled, such as code words, concealment of the sub-
4 stance, and so forth. Three, the fact that the substance
5 in which they were dealing was a white powder. Four,
6 the high prices paid in cash for the substance.

7 Five, the lack of complaint on the part of the
8 purchasers. Six, descriptive language used by certain
9 transactions. Seven, the white powder in evidence which
10 counsel stipulated to be heroin hydrochloride.

11 My throat is getting a little sore. We will
12 take a few minutes recess.

13 (Recess.)

14 Before I conclude this portion of the charge there
15 is one other statute that I must discuss with you.

16 It is not necessary for the government to show
17 that the defendant you are considering physically committed
18 the crime himself. It is also a crime, however, not only to
19 commit the illegal acts to which I referred but to
20 aid or abet or procure or induce another person to commit
21 such acts. That is based on what we call the aiding and
22 abetting statute, and it is very simple. Here it is:

23 "Whoever commits an offense against the
24 United States or aids, abets, counsels, commands, induces,
25 or procures its commission, is punishable as a principal."

1 mdbl 23

2 That statute, therefore, provides that a person who
3 aids and abets another to commit an offense is just as
4 guilty of that offense as if he committed it himself.
5 Accordingly, you may find a defendant guilty of the of-
6 fense charged in Counts 2, 3, 4, 5, 14, 15 and 16 of this
7 indictment if you find beyond a reasonable doubt that another
8 person committed the offense charged in those counts and
9 that the defendant you are considering aided and abetted
10 that person in effectuating it.

11 To determine whether a defendant aided and abetted
12 the commission of an offense you should ask yourself these
13 questions. Did he associate himself with the venture,
14 did he participate in it as something he wished to bring
15 about. Did he seek by his actions to make it succeed?

16 If he did, then he is an aider and abetter.

17 Of course, to find a defendant guilty of aiding
18 and abetting you must find something more than mere
19 knowledge on his part that a crime was being committed.
20 For a mere spectator, as I have told you already, it not
21 a participant. But in order to convict it is not necessary
22 that you find that a defendant himself did all of the criminal
23 acts since participation in the crime can be found
24 if you find he aided and abetted, in other words, that he
25 assisted another in committing it.

1 mabr 24

2 After all, it is not uncommon that in any com-
3 bination of persons, to achieve a common goal, legal or
4 illegal, each person has a different -- and I keep repeating
5 this -- not a duplicating job to do in going about the
6 attainment of the common purpose.

7 So the law provides that anyone who knowingly
8 aids or abets another in any manner in the commission of
9 a crime is equally guilty of the commission of that crime
10 and is himself a principal and may be charged directly
11 with the commission of a crime as principal and convicted
12 upon such charge, although the evidence indicates that he
13 only aided and abetted in the commission of the crime,
14 and did not have a major part in the undertaking.

15 He aids and abets if knowing the crime is being
16 committed what he does actually helps make it possible
17 or cause the commission of the crime.

18 Now let us go further . Counts 2, 3, and 4
19 of the indictment charge Joseph Mangano, Frank Pallatta,
20 Richard Bolella, and five others who are not on trial, with
21 the substantive offense of distribution of heroin and
22 possession with intent to distribute heroin. There is
23 another way that you may find these defendants guilty of
24 these three substantive counts besides under the
25 principles I have just given you relating to aiding and

1 mdbbr 25

2 abetting.

3 If you find that a conspiracy to distribute
4 heroin existed, that these three defendants were members
5 of it, and that the offenses charged in Counts 2, 3 and
6 4 were actually committed by another member of the same con-
7 spiracy in furtherance of the overall plan, you may find these
8 three defendants guilty of the substantive offense,
9 even if they were not physically present at the time that
10 the offenses were committed.

11 In other words, if you find beyond a reasonable
12 doubt that the persons identified as Skooch and Charlie
13 were members of a conspiracy to distribute or sell
14 heroin along with Maynano, Pallatta and Bolella you may
15 find Magnano, Pallatta and Bolella guilty of these three
16 counts if you determine that Skooch, or Charley physically
17 distributed the heroin in furtherance of the conspiracy.

18 The same principle applies with respect to
19 Count 9. This count charges the defendant Soldano and
20 another person who is not on trial, Joseph Malizia, with
21 distributing and possessing with intent to distribute
22 three kilograms of heroin.

23 You will recall that government witness
24 Verzino testified that Mr. Soldano sold him this heroin,
25 and that the actual delivery took place in Queens,

1 mabr 26

2 New York, Queens, New York, is not in the Southern Dis-
3 trict of New York. , You may find Soldano guilty of this
4 charge, however, if you find beyond a reasonable doubt that
5 he was part of the conspiracy to distribute heroin along
6 with Verzino and that he sold this to Verzino and that
7 Verzino took the heroin into the Southern District of
8 New York, which includes Manhattan and the Bronx, with
9 the intention of distributing it. In other words, if you find
10 that Soldano was a member of the conspiracy as charged along
11 with Verzino, and he gave the heroin to Verzino, and that
12 Verzino took it into the Southern District of New York with the
13 intention of distributing it, you may find Soldano guilty of
14 Count 9.

15 We come now to the words unlawfully, wilfully and
16 knowingly. They charge the defendants with having unlawfully
17 wilfully and knowingly committing the offenses set forth
18 there. Although these words define themselves never-
19 theless they are set forth in the counts of the indictment,
20 they have been repeated over and over again, so as to make
21 certain no one would be convicted because of mistake,
22 inadvertence or other innocent reason. So by use of these
23 words unlawfully, wilfully and knowingly the government
24 must prove beyond a reasonable doubt a specific intent to
25 commit a crime before there can be a conviction as to each

1 mdbl 27

2 count in the indictment. An act or failure to act is done
3 knowingly if done voluntarily and purposely and not because
4 of some mistake or inadvertence or carelessness or
5 other innocent reason. More precisely what is meant
6 by wilfully in the eyes of the law, means doing an act
7 purposely with bad intent. It means having the purpose
8 to cheat or do a wrong. It means with specific intent
9 to disregard the law or do that which the law forbid. It
10 regards conscious wrongdoing.

11 On the other hand, wilfully does not mean
12 inadvertence, carelessness or honest misunderstanding of what
13 the law requires.

14 And so carelessness, and so forth, is not the
15 equivalent of wilfulness.

16 Wilfulness involves the state of the person's
17 mind, and that is an issue of fact as much as the state of
18 his digestion. It is an issue of fact which you must
19 decide.

20 Medical science has not devised an instrument
21 which can record what was going on in a person's mind in the
22 distant past or what motivated that person. The
23 state of a person's mind may be inferred from words,
24 from his actions, from his conduct. It has often been
25 said you bring into the jury box with you your common

A251

mdbr 28

sense and the experience of your daily lives in the market place, in your home, in dealing with all kinds of people. That is what makes a jury such a tremendous force for the administration of justice.

What a pity it is if not an annoyance to come in contact with people whose intellectual achievement is restricted to a knowledge of what some books contain. Laden down with acknowledgment of honors at the academy they haven't got common sense, they have no knowledge of human behavior; you can pull the wool over their eyes, just like taking candy from a baby. They don't belong in a jury box. We want people who have lived, who have seen the bitter and the sweet, who can judge human behavior by actions as well as by words, persons who have rubbed elbows with all kinds of people, the mighty and the small, and of learned that courage can be found with the most ignorant person, and found lacking in those who boast of their degrees.

And so you apply that knowledge that has come to you that makes you ministers of justice. All that knowledge, that is the reason that you are so powerful. We want that as well as understanding of the law, your knowledge of human behavior. You undoubtedly agree with the great philosopher that books are a bloodless

Exhibit 29

A252

1
2 substitute for real life, and spare me from those who have
3 nothing more to offer than book knowledge. It is
4 obviously impossible to ascertain or prove directly what
5 is the operation of the mind or the intention of any
6 defendant. But a wise and intelligent consideration
7 of all the facts and circumstances shown by the evidence
8 and exhibits, the entire trial record in this case,
9 will enable you to come to a conclusion with a reasonable
10 degree of accuracy what were the defendants intentions.

11 Intent involves a mental attitude with a knowledge
12 of a defendant act, and with a knowledge of surrounding
13 circumstances. You may draw a defendant and logical
14 conclusion. In your every day affairs you are continuously
15 called upon to decide from the acts or actions of others
16 what their intentions are. Experience has taught us that
17 actions speak more clearly than spoken or written words.

18 You must rely in part on circumstantial
19 evidence in determining the guilt or innocence of a defendant
20 of each defendant in this case. Proof of the
21 circumstances surrounding a man's actions can supply
22 an adequate basis for a finding that a defendant acted
23 knowingly and wilfully. The actions of a man must be
24 set in their time and place, just as the meaning of a word
25 is understood only in its relation to other words in a

1 mdbbr 30

2 sentence, so the meaning of the particular act may de-
3 pend on the circumstnaces surrounding it.

4 Now let me come to another subject, and that is
5 similar acts. Remember we have received evidence on
6 that subject. I want to be mighty sure that that is
7 perfectly clear, too. It deals with the defendant relating
8 to prior similar acts by some of the defendants which
9 occurred prior to the conspiracy alleged in the
10 indictment.

11 Evidence that an act was done at one time
12 or on one occasion is not any evidence or proof whatever
13 that a similar act was done at another time or on another
14 occasion. That is to say evidence that a defendant
15 committed an act of a like nature may not be considered
16 by the jury in determining whether the accused committed
17 any act charged in the indictment.

18 Then how may it be considered, this evidence
19 dealing with prior similar acts? As I told you at the
20 time, and tell you again, the jury may consider that
21 evidence dealing with alleged acts of a like nature solely,
22 solely, solely, in determining the background and
23 development of the very conspiracy embraced within the
24 indictment before you.

25 Such evidence relating to prior similar acts
may not be considered by the jury for any other purpose

1 mabr 31
2 whatsoever.

3 I emphasize, the jury is not to infer that
4 the defendants had a criminal propensity or bad
5 character because of that kind of evidence that was
6 received.

7 Now a few words about what the law means by
8 direct and circumstantial evidence.

9 I believe in giving examples. I believe in
10 translating and making meaningful the heavy language of
11 the law, and I will do it here again.

12 I am looking at you. That is direct proof.
13 I see you with my eyes. Suppose I asked the clerk,
14 is the jury here? And he says yes. I don't see you when he
15 tells me that. That is circumstantial evidence that this
16 very same jury is here.

17 After all, I don't call your names off every single
18 time and look at every single one of you. That is
19 circumstantial evidence that you are here, even though
20 I don't look at you.

21 Suppose I gave you this language and didn't give
22 you examples. Would you understand it? Generally,
23 the proof offered is of objective facts and circumstances
24 from which one in terms of common experience can rationally
25 and logically include the ultimate fact. But with that

A255

1 mdr 32

2 example it comes home, doesn't it? I hope. Do you get
3 it? Do you get it?, Does anybody fail to get it?

4 Here is a common example used by judges over and
5 over again.

6 You came in today. The good Lord was kind
7 and gave us a shining sun, and you are here. And suddenly
8 somebody comes into the room and he is dropping wet, and
9 he sits down and a veritable puddle forms at his feet.
10 You didn't see the rain. That is circumstantial evidence
11 that is has been raining.

12 If you looked at the rain with your own eyes
13 that would be direct evidence, and that is all there is to it.

14 It is rare that there is direct evidence on this.
15 Knowledge is generally shown by circumstantial evidence.
16 And so direct evidence is testimony as to what a witness
17 saw, heard, or observed, what he knows of his own knowledge.
18 Circumstantial evidence, on the other hand, rests on an
19 inference. Proof is given of facts, like the umbrella,
20 wet clothing, and one infers therefrom what reasonably
21 follows in the common experience of mankind.

22 I point out to you that circumstantial evidence, if
23 believed, is of no less value than direct evidence.

24 There is absolutely no requirement that proof
25 of a crime and a defendant's guilt be by either or both

1 mdbl 33

2 types of evidence. The only requirement is that the .
3 proof, circumstantial or direct, or all of one or all of
4 the other, be beyond a reasonable doubt.

5 Now we come to accomplice testimony. Perna, Verzino.
6 What's an accomplice in the eyes of the law? I am sure
7 you know it. An accomplice is any person who participates
8 in the commission of an alleged offense.

9 The accomplice, an associate in performing
10 a crime has the purpose of either promoting, facilitating,
11 incurring or aiding another in committing a particular
12 crime. The fact a number of government witnesses are
13 accomplices or have criminal records is to be carefully
14 considered by you as bearing upon their credibility.

15 It is to be expected that the participants in
16 an enterprise so unholy and so illegal will not be
17 upright gentlemen.

18 Nevertheless, that doesn't say that you can
19 settle for less than what the law demands. You must
20 realize, I am sure, that in the prosecution of a trial
21 the government is frequently called upon to use witnesses
22 who are accomplices. Often it has no choice.
23 This is particularly so in case of conspiracy. Frequently
24 it happens that only the members of the conspiracy and he
25 or their accomplices have evidence which is relevant to

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1 mdbl 34

2 and important to the case.

3 However, it does not follow, because a person
4 has acknowledged participation in a crime, or is an
5 accomplice or has a criminal record, that he is not capable
6 of giving a truthful version of what occurred. That is for
7 you to decide.

8 As with courage, so it is with truthfulness.
9 It frequently comes from the mostly unlikely sources.
10 Those from whom we rightfully expect the truth very often
11 we find it not forthcoming, and those from whom we would
12 hardly expect it, from them sometimes a veritable avalanche
13 of convincing disclosure gushes forth.

14 The testimony of such persons, however, should
15 be viewed with caution, must be scrutinized with the utmost
16 circumspection.

17 The fact that Mr. Amorosa is convinced, the fact
18 that counsel for the defense are not convinced -- in fact,
19 they denounce it with every bit of energy they can bring
20 in back of their words -- is of no concern to me or to
21 you. It is what you think, you the jury. But you must
22 be cautious when it comes to relying on the testimony
23 of a wicked person who is an accomplice. What I am
24 emphasizing is that that particular element or elements
25 does not automatically nullify them, but you have to decide

1 mdr 35
2 that issue, and so you will consider whether the testimony
3 was inspired by self-interest, personal advantage, hostility,
4 or whatever other human factors may be involved. You should
5 consider whether the testimony of such a witness was a
6 fabrication induced by a promise or even a belief that they
7 will receive favorable consideration in their respective
8 cases

9 There is no requirement in the federal court
10 that the testimony of an accomplice be corroborated.
11 Conviction may rest on the uncorroborated testimony of an
12 accomplice, if you believe it and find it credible.

13 To acquit a defendant you need not find that any
14 witness against him has lied. The test always is
15 "are you satisfied beyond a reasonable doubt from the
16 entire record in accordance with the Court's instructions
17 of the guilt beyond a reasonable doubt of each of these
18 defendants on trial?

19 So if you find the testimony of any of these
20 accomplices was deliberately untruthful, reject it. If upon
21 a cautious and careful examination you are satisfied that
22 the witnesses have given a truthful version, and the govern-
23 ment has sustained its burden of proof beyond a reasonable
24 doubt, in all other respects as outlined in my instructions,
25 then you have sufficient proof on which to bring in a

1 mabr 36

2 verdict of guilty. Otherwise, the defendants are entitled
3 to an acquittal.

4 Evidence that a person has been convicted in the
5 past of certain crimes may be considered by you in de-
6 termining the witness' credibility by which is meant his
7 worthiness of belief.

8 As you contemplate the testimony before you
9 of a confessed perjurer, of a confessed accomplice,
10 I would suggest you might consider whether he presented an
11 instance of purge or perjury.

12 Does the witness purge himself? Has he for the
13 moment pushed aside all the rot in the make-up? That is
14 possible. Or is this a Machiavellian approach for a very
15 personal reason. You have no concern with the
16 government's estimate and no concern with the estimate by
17 counsel for the defense. I venture none. I just suggest
18 to you guides for the weighing of testimony.

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A260

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2 The government contends that there is aside
3 from that kind of testimony from these accomplices,
4 Perna and Verzino, other proof which you may regard as
5 a reliable character in support of the indictment. Its
6 veracity or believability is an issue that can be resolved
7 by the jury.

8 I would say to you, your greatest challenge is your
9 evaluation of the testimony as it came from the lips of
10 witnesses and your estimate of the exhibits and the
11 stipulations.

12 It is your estimate of the testimony given by the
13 witnesses, and each of them, that is controlling. Quality
14 of proof is really the test. Inconsistencies or
15 discrepancies in the testimony of a witness, or between
16 the testimony of different witnesses, may or may not cause
17 the jury to discredit such testimony. In weighing the effect
18 of such a discrepancy, consider whether it pertains to a
19 matter of importance or to an unimportant detail, and whether
20 the discrepancy results from innocent error or from wilful
21 falsehood.

22 If you find that any witness has wilfully
23 testified falsely as to any material fact, you may reject
24 all the testimony of that witness, or you may accept such
25 portion or part which commends itself to your belief.

A261

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2 In sizing them up in your search for the truth,
3 you should be guided by your plain, every day common
4 sense. You saw each witness, you observed the manner
5 of his giving testimony. Out of the welter of testimony
6 you are called upon to determine the factual issues in the
7 case. Thus, upon all the evidence, you, the jury, are to
8 resolve the conflict.

9 To acquit a defendant, ladies and gentlemen,
10 you need not find, I repeat, that any witness against him
11 has lied. The test always is, are you satisfied beyond
12 a reasonable from the entire record, in accordance with
13 the Court's instructions, of the guilt beyond a reasonable
14 doubt of the defendant on trial.

15 If upon a cautious and careful examination you
16 are satisfied that the witnesses have given a truthful
17 version and the government has sustained its burden of
18 proof beyond a reasonable doubt in all of the respects
19 as outlined in my instructions, then you have sufficient
20 proof on which to bring in a verdict of guilty. Otherwise,
21 the defendants are entitled to an acquittal.

22 Ask yourselves, "How does his testimony," referring
23 to every witness, "impress me?" What degree of credit you
24 should give the witness' testimony should be determined
25 by his conduct, his manner of testifying, his relation

A262

number 3

to the controversy. His bias or impartiality, and the reasonableness of his statements. Is the witness interested in the outcome of the case? Is there a motive to testify falsely? Was the witness mistaken? Was he correct?

In other words, what you try to do, to use the vernacular, is to size up a person, just as you would in any important matter when you are undertaking to determine whether or not a person is truthful, candid and straightforward.

A witness may be discredited or impeached by contradictory evidence that at some other time he has said or done something or failed to do or say something which is inconsistent with his present testimony. The testimony of any witness whose self-interest is regarded convincing to you is to be considered with great caution and weighed with great care. You should consider the witness' intelligence, motive, state of mind and demeanor while on the stand. You should consider his candor, or lack of candor, his possible bias, his means of information, and the accuracy of his recollection. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give that witness' testimony such credibility as you think it deserves. Your determination of the

mmbr 4

credibility of a witness very largely depends upon the impression he made upon you and the conviction with which he testified, the way he testified. Did it come over to you? Did it impress you? Did it touch you? Did it affect you? That is for you to consider, not how that witness impresses any of the rest of us.

The fact that a witness is an official or an employee of the government does not mean by itself that you should give greater or special credit to his testimony. The testimony of any such witness should be weighed and scrutinized in the same manner as any other witness who has testified in this case. You judge their testimony in the same way, taking into account interest or any factor which may have influenced them to color or fabricate their testimony.

Examine with care for the clean or impure motive that prompts the testimony of a witness. Ask yourselves after each witness, "What was the witness' motive? Did the witness commit perjury in order to get the defendants convicted? Or was his testimony induced by an unflinching desire to tell the truth. Ask yourselves whether the testimony was adduced because of dislike of a defendant or revenge, or for any other impure motive. Does the trial record point to a wrongful reason which would

1 mmbr 5

2 prompt the testimony? Or do you believe that a witness
3 testified as he knew the facts to be and scrupulously
4 observed his oath? All of this is for you to evaluate.

5 So, you see, a study of the motive for
6 testimony may be a strong indicator, if not a conclusive
7 one, as to where truth lies and falsity exists.

8 Several prosecution witnesses signed agreements
9 with the government wherein they agreed to do various
10 things in exchange for certain consideration from the
11 government. Specifically, in those agreements they agreed
12 to testify truthfully, in good faith, and to reveal in full
13 their total involvement and all their associates in the
14 crimes charged. These agreements are not any evidence
15 whatsoever that those witnesses have, in fact, told the
16 truth, or testified in good faith, or have revealed their
17 total involvement in the crimes.

18 Whether or not the witnesses have testified
19 truthfully, fully and in good faith from the witness stand
20 in this case is a question of fact which only you, the
21 triers of the fact, can decide.

22 You have seen very clearly that six of the
23 defendants did not take the stand. What has the law to
24 say? There have been some words as to why. Disregard
25 all that. I allowed it because there was no particular

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A265

objection at the time. But we are not concerned with whether or not or what induced or what prompted a defendant not to take the stand. Look at the law, just be guided by the law. A defendant has an absolute right to remain silent. He has an absolute constitutional right to sit throughout the trial from start to finish without uttering a word or presenting a word or a syllable of evidence in his behalf; he has a right to demand that the charge be proved beyond a reasonable doubt without his participation. No defendant in a criminal case is required to testify.

These are propositions of law, and I hope I have convinced you how meaningful they are to a Judge. Whether they favor a defendant or favor the government, that is the law. These propositions of law are bigger than you and bigger than counsel and bigger than all the people in this room, including the Judge. On their preservation depends our destiny. If you don't think that keen observers of the scene in America think that the day is not too far off when there will be an invasion of the holy ground on which justice predicates and holds firm, as with hoops of steel, these principles of law, you are mistaken,

So if you as much as have a shadow cross your mind against any defendant because of his failure to testify, you yourself would violate your oath. You cannot

1 numbr 7

2 disregard these instructions or any of them. And so I
3 repeat to you that a defendant in a criminal case does not
4 have to testify, and the fact that he does not testify or
5 even if he called no witnesses whatsoever cannot be held
6 against him in any respect.

7 if you will remember what I told you earlier,
8 you will see how this naturally follows. Since the
9 burden of proof rests upon the government and never
10 shifts, a defendant need not take the stand or call wit-
11 nesses. It still remains the burden of the government
12 to prove the guilt of the defendant beyond a reasonable
13 doubt. And so I repeat, in no respect might the fact
14 that a defendant has not testified enter into your deliber-
15 ations, nor may you draw any adverse inference against
16 him by reason thereof.

17 All of life is a sort of game, and in the game
18 you have certain values to each piece. The presumption
19 of innocence is a big piece in favor of a defendant.
20 The presumption that I have just announced is also a
21 piece in the game of life, and a clean game, not a crooked
22 game, and you give those factors their appropriate value.
23 But that does not prevent the government, if you think the
24 government has done so, from adducing proof which never-
25 theless may satisfy you beyond a reasonable doubt as to

1 mmbr 8

2 the guilt of the defendant.

3 What about a defendant who did testify? Two of
4 them took the stand. What has the law got to say as
5 to them? As to DeLutro and Gwynn?

6 The law permits, but does not require, a
7 defendant to testify in his own behalf. The testimony
8 of DeLutro and Gwynn is before you. You and only you can
9 determine how much credibility or believability their
10 testimony is entitled to or how little.

11 However, I instruct you that it is the law that
12 interest creates a motive to give false testimony, that
13 the greater the interest the stronger is the temptation,
14 and that the interest of a defendant in the result of a
15 trial is of a character possessed by no other witness and
16 is, therefore, a matter which may affect the credence which
17 shall be given to his testimony.

18 However, let me point out that the fact that the
19 defendants DeLutro and Gwynn have such an interest in the
20 case does not mean that they will testify falsely. It is
21 for you, the jury, to decide whether they testified truthfully
22 and how much weight to give to their testimony.

23 Now a few words as to inconsistencies -- and
24 I am not far from completing this charge.

25 Where a witness has been impeached on the basis.

1 mmbr 9

2 of a prior inconsistency, or inconsistent statement, he
3 may always endeavor to explain away the effects of the
4 supposed inconsistencies by relating whatever circum-
5 stance or circumstances would remove it.

6 Thus, fear of consequences of plain speaking,
7 such as personal safety of one's self is such a circum-
8 stance and may be considered by the jury in evaluating
9 the reasons for the inconsistency.

10 An expert was called to the stand, a handwriting
11 expert. He offered testimony under oath. A word or
12 two as to the law with regard to such a one.

13 Witnesses who by education and experience have
14 become expert in some art, science, profession, or calling
15 may state an opinion as to relevant and material matter
16 in which they profess to be expert, and may also state
17 reasons for the opinion. You should consider each
18 expert opinion received in evidence in this case and give
19 it such weight as you think it deserves.

20 If you decide that the opinion of an expert
21 witness is not based upon sufficient education and
22 experience, or if you should conclude that the reasons given
23 in support of the opinion are not sound, or that the
24 opinion is outweighed by other evidence, you may disregard
25 the opinion entirely.

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A269

Now a few words as to a prior conviction.

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment of a witness.

Now a few words as to the use of informants.

There has been testimony with respect to the use of persons sometimes referred to as informants or informers. These services are availed of by government agents at times to obtain introductions to persons suspected of violating the law. There are certain types of crime where, without the use of informants, detection would be extremely difficult. Frequently, it is necessary to get leads for introductions to persons allegedly engaged in illegal activities or otherwise to aid enforcement officers. The law from time immemorial has permitted the use of informers, provided the rights of a defendant are not violated. Whether or not you approve the use of an informant in an effort to detect law violation is not

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A270

1 to enter into your deliberations. I will tell you --
2 I don't mind including this -- that the representatives
3 of the government to use informants sometimes take their
4 lives into their hands. It takes courage to deal so often
5 with these despicable characters in order to know where the
6 fire is going on and where the rot exists and where the
7 cash or the secret hiding places can be found. You are
8 not going to go look for it; someone has to. The question,
9 is, what was done here in this case? Was it done with that
10 kind of high motive or was it not? Was there pollution
11 that runs amuck here, or is it confined? Or is there
12 any, really, when you come to add up all the evidence?
13

14 There is no presumption against the government
15 from its failure to call a witness when it appears that
16 his testimony would be merely cumulative or repetitious
17 and of no greater value than that of witnesses who have,
18 in fact, testified.

19 Whenever a person is equally available to both
20 sides to testify, that is, when he can be subpoenaed to
21 testify by either the defense or the government, and
22 neither side calls him as a witness, you are not permitted
23 to draw any inferences against either the defense or the
24 government for their failure to call that person as a
25 witness.

numbr 12

A271

1 You may not draw any inference, favorable or
2
3 unfavorable, towards the government or the defendants on
4 trial from the fact that certain persons were not named
5 as defendants or, having been named, are not on trial before
6 you now. Those matters are wholly outside your concern and
7 have no bearing on your function as jurors.

8 Now I bring the charge to a conclusion.

9 Ladies and gentlemen of the jury, when will you lay down
10 as law the letter, the spirit of the law, that a defendant is
11 presumed to be innocent until the government fulfills
12 its obligation proving him guilty beyond a reasonable doubt,
13 and all those other propositions of law that I have tried to
14 emphasize and to delineate for you, each one equally sacred,
15 we must not lose sight of the rights of the other party
16 in this litigation, the plaintiff, the government. We
17 must bear in mind, and I so charge you, an equally vital
18 concept of justice, defined in classic fashion by the
19 Supreme Court of the United States, and hence the law of
20 the land, ... justice though due to the accused, is
21 due to the accuser also.

22 If you find the law has not been violated, you
23 should not hesitate for any reason to return a verdict of
24 not guilty. That would be your sworn obligation.
25 But, on the other hand, if you should find that the law has

1 mmbrr 13

2 been violated as charged, you should not hesitate because
3 of sympathy or any other reason to render a verdict of
4 guilty because in your concept of what is required here
5 that would be the justice of the case, if you so decide.
6 And if that is your decision, it will also constitute a clear
7 warning that a crime of this character may not be committed
8 with impunity. The public is entitled to be assured
9 of this.

10 All of these things that I have mentioned follow
11 only if, as and when you are satisfied beyond a reasonable
12 doubt as to each of the elements which I told you the law
13 makes imperative in order to sustain each of the counts
14 set forth in the indictment.

15 Under your oath as jurors you cannot and must not
16 allow a consideration of the punishment which may be
17 inflicted upon a defendant if he is convicted to influence
18 your verdict in any way. If you did that, you would clearly
19 violate your own oath. That duty rests exclusively with
20 the Judge, who, upon the basis of a full official report deal-
21 ing with the defendant's general life pattern of
22 behavior, imposes sentence.

23 The indictment names these eight defendants.
24 In determining the guilt or innocence of each of these
25 eight defendants, you must bear in mind that guilt is

1 mabr 14

2 personal. Indeed, I told you that, and I want to say
3 it over and over and over again. You got to look at
4 the evidence as it relates to Magnano, you got to look at
5 the evidence as it relates to Pallatta, you have to look
6 at the evidence as it relates to each one, add it all up,
7 all the evidence. You don't take one piece of evidence
8 and say, "Does that satisfy me beyond a reasonable doubt?"
9 Of course not. It has a value. How much weight do you
10 give it? None at all? A little bit? A whole lot?
11 You take this piece and that piece and that piece. Ask
12 yourselves when you add it all up as to a particular
13 defendant, is he guilty or is he not guilty. Then you go
14 to the next one and the next one. You apply the same
15 test.

16 Once in a great while I get a note from a juror
17 because I did not make it clear, and everyone does not
18 speak up, does not say, "You know, I am really not that
19 well informed." Who does that? How unusual is it for
20 a person to confess his limitations. The guise under
21 which so many people operated. Then when they get called
22 to account, they flop on their faces. Up to that moment
23 they have gotten away with it -- silence, gesture, a
24 knowing look. And then all of a sudden they reveal their
25 true selves, empty, low, contemptible. And there is a

great revulsion that ensues.

Remember that guilt is personal. The guilt or innocence of each defendant on trial before you must be determined separately with respect to him, solely on the evidence presented against him, or the lack of evidence.

I repeat, the indictment is in 17 counts, but you are to consider only 13. Each count charges a separate crime. There are facts and elements common to more than one count. But you must consider each count separately as to each defendant and return a separate verdict of guilty or not guilty for each count and each defendant in the indictment.

The verdict, whether for acquittal or for conviction, must be unanimous. Each juror is entitled to his own opinion. You should, however, exchange views with your fellow jurors. That is the very purpose of jury deliberation, 12 jurors, not one, not three, not five, 12.

You have a right to your opinion, but you must discuss it with one another; you must give each the benefit of your views.

And so the law says that you must listen to the arguments of your fellow jurors, you must consult with one another, you must reach an agreement based solely and

1 mmbr 16

2 wholly on the evidence, if you can do so without violence
3 to your own individual judgment, and to employ that high
4 degree of genuine courage you justifiably expect, especially
5 in these perilous times, from your public officials.

6 You should not hesitate to change an opinion,
7 which upon a consideration of all the evidence with your
8 fellow jurors, appears erroneous. However, if after
9 carefully considering all the evidence and the arguments
10 of your fellow jurors you entertain a conscientious view
11 that differs from others, you are not to yield your con-
12 victions simply because you are outnumbered or outweighed.

13 The exhibits and a copy of the indictment will
14 be sent to you promptly.

15 If, to help you in your deliberations, you wish
16 a point or points in the testimony read, please specify
17 exactly as possible just what point you wish the official
18 reporter to locate, and it will be read to you, no matter
19 how much time it takes.

20 Your oath, ladies and gentlemen of the jury, sums
21 up your duty, and that is without fear or favor to any man
22 you will well and truly try the issues between these
23 defendants and the United States of America according to the
24 evidence given to you in open court and the laws of the
25 United States, and that is what you swore to do.

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1
2 I have every confidence that you will fulfil your
3 sworn obligation as American ministers of justice to render
4 a true verdict based solely and exclusively on the facts
5 and on the law in this case.

6 If the government has carried its burden in
7 accordance with the evidence and the law as to the
8 defendants, you must not flinch from your sworn duty, you
9 must convict. But if it has failed to carry its burden
10 as to a defendant, your sworn duty is to acquit. And this
11 I say to you with measured tones: You have undoubtedly
12 talked about justice in your homes and in your daily affairs,
13 in your comings and your goings, as is your inalienable
14 right. The point is that now each of you sits in the
15 seat of justice. How will you do? Apply your criticism
16 to yourselves. Will you call them as you see them? Will you
17 do justice as between the government on the one side and
18 the defendants on the other solely on the facts and on the
19 law? This Judge has every confidence that you will do
20 exactly that.

21 Marshal, will you take the jury to the jury room.

22 (Jury excused.)

23 THE COURT: Are there any exceptions or requests
24 by the government?

25 MR. AMOROSA: No, sir.

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assured me that all is well on that score. I may not see the alternates when they return. I do not want to get off the bench without saying a word to each of you. These things are meaningful to me. I know other people take these things in stride, they take out of a human being all they can exact; they can't duplicate, they don't have what it takes to duplicate it; they think it is a lot of nonsense, a waste of time; they have not got the capacity to do it, and they just dislike everybody who does.

But may I say to you with all the sincerity that I can summon, that I am indebted to you for the inspiration that came to me as a Judge to see how each of you clung to each word and showed the spirit of caring. You really care about what it is that brings us together, and that notion or that caring is a great cement that holds all these parts together. It is really the basis of all religions. And so you go with the thanks of the Court. Your contribution is enormous; it typifies what each of you has demonstrated. Thank you.

We will announce a recess.

(The jury retired to go to dinner at 7:30 p.m.)

(The jury returned to the jury room at 9:00 p.m., at which time the alternate jurors were excused, and the jury commenced its deliberations.)

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2 (The following took place at 9:50 p.m.:)

3 THE COURT: It is now 10 to 10. About 9:35

4 I received the following note from the jury:

5 "Judge Cooper:

6 "The jury would like the following:

7 "1. Copies of the indictment.

8 "2. Copies of charges.

9 "3. Pads and pencils.

10 "Thank you.

11 "Sheila Simon, Forelady."

12 The clerk tells me that item 3, pads and pencils,
13 have already been sent in, and there seems to be some dispute
14 as to the indictment.

15 Now, what is wrong about sending in the indictment?
16 What is the government's position?

17 MR. AMOROSA: We think the entire indictment
18 as it stands now can be sent in. In my opening remarks
19 I referred to these other counts.

20 THE COURT: I did, too, in my charge. I had
21 to read them in order to tell them exactly what was charged
22 with regard to the conspiracy.

23 What is the defendants' position?

24 MR. EPSTEIN: Most respectfully, when your
25 Honor read the substantive counts, your Honor omitted

Counts 11, 12 and 13, which counts refer to defendants who have been severed. A copy of the indictment should go to the jury, and as to the counts which are not before the jury, there is no reason for those counts to go to the jury.

THE COURT: It is an unnecessary burden. No. 1, you got to delete them; No. 2, I can't see how that can be prejudicial one way or the other, the fact that there are three other counts. There are a lot of people mentioned here who are not accounted for in any way so far as the jury is concerned. Of the whole group only eight are on trial, and I have already read substantial parts of it. I can't see that is enough of an objection. I am going to rule the whole indictment goes in. They have the overt acts and everything else.

MR. J. PANZER: May we just cross out those counts that are not to be considered by them, because they may become confused.

THE COURT: Don't worry about that. If I thought there would be any prejudice, I would go along with you. But I have been rattling off names that are unknown to them that were mentioned from time to time, names of those who are not on trial right now; and I can't see that adding the same recital with regard to three other counts

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2 makes any difference at all. There is no prejudice
3 there. Send it in;

4 They say copies of charges. What I think they
5 mean are the overt acts. I would send that in, rather than
6 read them. Let us get that resolved.

7 Marshal, ask the jury -- and I will wait for
8 your answer -- when they say "copies of charges" do they
9 mean the overt acts that I referred to when I charged them?
10 Ask them if they mean a copy of the overt acts that I
11 referred to in the course of my charge, will you, please?

12 MR. AMOROSA: Judge, with respect to the
13 exhibits, there are many exhibits which your Honor ruled
14 were admitted only to a limited extent, for instance,
15 the Perna agreement, the Vasquez agreement, the Verzino
16 agreement, where we had to delete certain paragraphs
17 because of your Honor's rulings. Because of this,
18 and not only with respect to just those three, Judge,
19 the government is going to suggest that we not send
20 any exhibits to the jury --

21 THE COURT: I am sorry. All the exhibits go
22 in. If you have to go through some of them, if some have
23 to be retyped, that is just too bad. If you want to cover
24 up certain parts, that is okay with me. The parts that
25 didn't go in, take care of. But don't tell me the jury

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2 should not see the actual exhibits because it is an
3 inconvenience. That is out.

4 MR. AMOROSA: Can we, therefore, send some in
5 now?

6 THE COURT: Certainly, and have the clerk take in
7 the others.

8 Mr. Bowen, you go right about taking them in.
9 What the jury is entitled to, I am going to see
10 that they get.

11 Now, what do you say, marshal?

12 THE MARSHAL: Your Honor, they want the counts
13 in the indictment plus the overt acts.

14 THE COURT: Give the marshal a clean copy of the
15 indictment. That will take care of their message.

16 MR. J. PANZER: Does that include the exhibits
17 of the defendants?

18 THE COURT: I am just sending the indictment in
19 now. I am ruling that all the exhibits are to go into
20 the jury room, and I want you to recite for the record
21 what you are sending in to the jury. You are going to be
22 held accountable for your recital on the record.

23 No. 2, if there is any exhibit or exhibits which
24 cannot go into the jury room in their entirety, because
25 we ruled that certain portions are not in evidence,

1 mmbbr 32

2 then I want those immediately attended to so they can be
3 sent in within a matter of minutes.

4 Now, you tell me which ones are being sent in
5 and give them to the clerk to send in. That is all there
6 is to it.

7 MR. AMOROSA: Does your Honor want me to
8 read into the record the ones I am going to send in?

9 THE COURT: That is a common thing you do
10 every time. Have the record reveal what it is the government
11 is sending in to the jury. And the defense will read into
12 the record what they are sending in.

13 THE MARSHAL: The jury wants to know if
14 they can have copies of the indictment.

15 THE COURT: No, just the one.

16 Get your exhibits together. I will step off the
17 bench for a minute. The jury wants them right now. They
18 are the bosses right now and they get what they want.

19 (Recess.)

20 THE COURT: Call off the exhibits.

21 MR. AMOROSA: The following government exhibits
22 in evidence: 1, 1-A, 2, 2-A, 2-B, 3, 3-A, 3-B, 4-A through
23 4-C, 6, 6-A, 6-B, 7, 7-A, Government's Exhibit 8, with the
24 exception of paragraphs 1, 7 and 8, which will be taken out
25 by your clerk, 9, 9-A, 10-A through 10-K -- 11 will not be

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1 number 33

2 submitted to the jury, as it is heroin --

3 THE COURT: I already told him the heroin and the
4 money would be available if they insisted on it. That is
5 it.

6 MR. AMOROSA: Did you say the heroin would be
7 available for the jury?

8 THE COURT: If they wanted to see it, sure. It is
9 an exhibit; you will have to produce it. They have not
10 asked for it. Why do you make an argument about it?

11 MR. AMOROSA: Government's Exhibits 32, 33, 33-A,
12 33-B, 35, 35-A, 36, 36-A, 3503-F with the exception of the
13 first, the sixth and the seventh paragraphs, 37, 37-A,
14 38, 38-A, 39-A through C, 40, 41, 42, 42-A, 43-A
15 through E, 45, 46, 77, a tape of the Perna conversation
16 with Condella, your Honor, which is here, and the jury
17 would not be able to make use of it, unless it was on the
18 recorder.

19 THE COURT: Do you have a transcript?

20 MR. AMOROSA: There is a transcript which
21 was just admitted as an aid to the jury.

22 THE COURT: So there is no harm in that, is there?
23 Why can't that go in?

24 MR. AMOROSA: We have no objection.

25 THE COURT: Well, send in the tape and send in the

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transcript, and if they want the tape played, why, you just set up the machine. That is all. The jury is entitled to the exhibits. Don't quarrel with them. They want them; let them do what they want. If they want the heroin, deliver the heroin to them with 15 guards. They are entitled to pick it up and look at it. If they want the money, let them look at it. It is an exhibit.

MR. AMOROSA: Government's Exhibit 69 is the transcript of the conversation between Perna and Condella.

THE COURT: The chances are they won't want to be bothered with any of it. They have already been told the heroin and the money is in the vault, or wherever I said, and in all likelihood they would have no interest in sending for it. But you have to let the jury have whatever they are entitled to. They have to resolve the guilt or innocence of these people. They have to look at these exhibits, not at you and not at me.

MR. AMOROSA: Government's Exhibit 86, which is also Soldano's Exhibit C in evidence, Government's Exhibit 106, 107 and 108, 112 and 110.

THE COURT: Does the government represent now that it has mentioned each and every exhibit that was received in evidence on behalf of the government?

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2 MR. AMOROSA: Yes, we have, sir.

3 THE COURT: Very well. Turn it over to the marshal.
4 Marshal, will you take it, please?

5 MR. AMOROSA: There are some additional defense
6 exhibits.

7 THE COURT: In the meantime, we have already
8 wasted too much time. They sent this note in almost
9 three-quarters of an hour ago. In most cases the lawyers
10 get together, they pile up the exhibits, and in ten minutes
11 the whole business is in the jury's hands.

12 Let us get going. Give them to the marshal.
13 Let him, at least, take that much in.

14 Mr. Edward Panzer, the Court designates you as
15 the one to collect all the exhibits on behalf of the
16 defense. Are you ready to do that or do you want
17 a little more time?

18 MR. E. PANZER: I am ready. Magnano's Exhibit K,
19 Magnano's Exhibit J, Magnano's Exhibit G, Pallatta's
20 H, Pallatta's C, Pallatta's G, Pallatta's B; DeLutro's
21 C, Soldano's D and Soldano's C. Those are all the defense
22 exhibits.

23 THE COURT: Thank you. Do you represent,
24 Mr. Edward Panzer, so far as you know those are all the
25 exhibits on behalf of all the defendants?

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2 MR. E. PANZER: Yes.

3 THE COURT: Marshal, will you take those into the
4 jury room, please. Turn them right over to the marshal,
5 will you, Mr. Panzer?

6 That takes care of that.

7 Mr. Clerk, will you take the jury's note.

8 (Jury note marked Court's Exhibit 6 for
9 identification.)

10 (At 10:55 the jury took its place in the jury
11 box.)

12 THE COURT: Madam Forelady and members of the
13 jury. Application granted. You would like to adjourn
14 at 11 p.m. and begin tomorrow at 10 a.m.. I was about to
15 send for you when your note came. You have had a full
16 day. Go home and have a good night's rest. Come back
17 tomorrow morning at 10.

18 Always remember -- I have seen these things more
19 than you; I have lived a long time and seen how people
20 behave -- watch yourselves. The case is now in your hands.
21 Someone might be tempted to talk to you, to telephone you,
22 to bother you. You let me know immediately. I don't think
23 there's a chance of it happening, but it has happened in
24 the past. The law has a way of meeting. I hope I have
25 shown you that the Judge is not afraid to act. If someone

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1 does something not proper, I will move right on in.
2 That is the only thing I can say of myself. I have done
3 it. I will continue to do it until my last days. Nobody
4 is going to bother you. As I said, the chances of it
5 happening are very small. I want you to know that you are
6 to be on your guard. Don't let anybody bother you. Go right
7 to your room in the morning. Nobody has a right in there, not
8 even the marshal. He knows his place. When you want him,
9 you knock on the door. He is not entitled to be in that
10 room.; that is the inner sanctum; That is yours. I can't
11 go in there; No one else can go in there where you preside.
12 We understand each other. Thank you. Good night.

13 (Jury excused.)

14 MR. AMOROSA: Do we have your Honor's per-
15 mission to retrieve the exhibits and bring them back
16 tomorrow after the jury leaves?

17 THE COURT: You are absolutely right.

18 Marshal, go right in now, get all
19 the exhibits and bring them back here in my presence.

20 THE MARSHAL: Yes, sir.

21 (The marshal complies.)

22 THE COURT: Thank you, Marshal. Look them over
23 quickly and tell me whether you have got everything.

24 MR. AMOROSA: Yes, everything appears to be here,
25

BLOSSNER 76 1011 Peo. v. Seldano

STATE OF NEW YORK)
 : SS.
COUNTY OF NEW YORK)

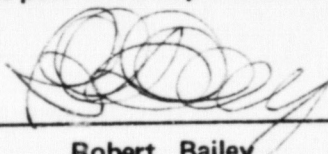
ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 19 day of March 1976 deponent served the within Appendix upon:

U.S. Attorney, Southern Dist. of NY

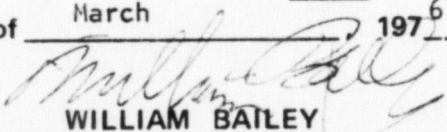
attorney(s) for
Appellee

in this action, at
1 St. Andrews Pla.
NYC

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


Robert Bailey

Sworn to before me, this 19
day of March, 1976.


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976